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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 09-50026

6 | In the Matter of:

7

8 MOTORS LIQUIDATION COMPANY, et al.,
9 f/k/a General Motors Corp., et al.

10 | Debtors.

11

13

14 U.S. Bankruptcy Court
15 One Bowling Green
16 New York, New York

17

18 | April 26, 2011

19 9:51 AM

20

21 B E F Q B E :

22 HON. ROBERT E. GERBER

23 U. S. BANKRUPTCY JUDGE

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2 HEARING re Debtors' 137th Omnibus Objection to Claims (Eurobond
3 Deutsche Debt Claims).

4

5 HEARING re Debtors' 138th Omnibus Objection to Claims (Eurobond
6 Deutsche Debt Claims).

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8 HEARING re Debtors' 141st Omnibus Objection to Claims (Eurobond
9 Deutsche Debt Claims).

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11 HEARING re Debtors' 143rd Omnibus Objection to Claims (Eurobond
12 Deutsche Debt Claims) Schwake - Adj. to 5/17/2011 at 9:45 a.m.

13

14 HEARING re Debtors' 217th Omnibus Objection to Claims
15 (Duplicate Claims Filed by Individual Members of the Dex-Cool
16 Class).

17

18 HEARING re Debtors' 218th Omnibus Objection to Claims
19 (Duplicate Claims Filed by Individual Members of the Dex-Cool
20 Class).

21

22 HEARING re Debtors' Objection to Proof of Claim No. 28231 Filed
23 by Isaac Oliva.

24

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1 HEARING re Motion of Debtors for Entry of Order Pursuant to
2 Fed. R. Bankr. P. 9019 and Fed. R. Civ. P. 23 Approving
3 Agreement Resolving Proof of Claim No. 51095 and Implementing
4 Modified Dex-Cool Class Settlement.

5

6 HEARING re Debtors' Objection to Proof of Claim Nos. 00136,
7 00552, 07020, 09072, 14901, 19246 and 19247 Filed by Sharyl L.
8 Carter.

9

10 HEARING re Motion of Debtors for Entry of Order Pursuant to
11 Fed. R. Bankr. P. 9019 and Fed. r. Civ. P. 23 Approving
12 Agreement Resolving Proof of Claim No. 51093 and Implementing
13 Modified Class Settlement.

14

15 HEARING re Motion of David Irwin for Relief from Automatic Stay
16 to Conduct Limited Intrusive Testing of Debtors' Property.

17

18 HEARING re Debtors' Objection to Claim Nos. 67121 and 67122.

19

20 HEARING re Debtors' Objection to Proof of Claim No. 70285 Filed
21 by Stanley R. Stasko.

22

23 HEARING re Motion for Relief from Stay Filed by Dave Shostack.

24

25 Transcribed by: Pnina Eilberg

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19 ALSO PRESENT:

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21 SHARYL Y. CARTER, In Pro Per/Pro Se (TELEPHONICALLY)

22 DAVID A. RADKE, In Pro Per/Pro Se (TELEPHONICALLY)

23 STANLEY R. STASKO, In Pro Per/Pro Se (TELEPHONICALLY)

24 SARAH THOMPSON, Barclays Capital, Inc. (TELEPHONICALLY)

25

1 P R O C E E D I N G S

2 THE COURT: Good morning. Okay. We're here on Motors
3 Liquidation. We have quite a number of claims matters, I
4 believe. Is my microphone working? You can hear me okay?

5 (No response)

6 THE COURT: All right. I have your agenda letter, I
7 don't know if that's the order in which you want to proceed or
8 not, whatever you prefer Mr. Smolinsky.

9 MR. SMOLINSKY: Thank you, Your Honor. Good morning.
10 Joe Smolinsky of Weil, Gotshal & Manges. We appear before you
11 this morning not only as counsel for the debtors and post-
12 effective date debtors but also as counsel to the Motors
13 Liquidation Company GUC Trust, that's the entity that is the
14 successor to the debtors for purpose of reconciling claims and
15 distributing property to holders of allowed claims.

16 THE COURT: Is this the first hearing in which you've
17 appeared in this capacity?

18 MR. SMOLINSKY: For me it is, Your Honor. I believe
19 it is my first.

20 THE COURT: The plan has now gone effective?

21 MR. SMOLINSKY: Yes. It went effective on the 31st of
22 last month.

23 THE COURT: Uh-huh. Okay.

24 MR. SMOLINSKY: Your Honor, I have no problem going
25 through the calendar as it appears. The first matter is the

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1 debtors' objections to seven proofs of claim filed by Sharyl
2 Carter. I would ask if Sharyl Carter is on the phone?

3 THE COURT: Ms. Carter, are you on the phone? Ms.
4 Carter?

5 (No response)

6 THE COURT: My log shows that she was going to
7 participate, Mr. Smolinsky.

8 MR. SMOLINSKY: And Your Honor.

9 OPERATOR: Ms. Carter, please unmute your line.

10 THE COURT: I beg your pardon?

11 OPERATOR: Ms. Carter is online. I think she has her
12 phone muted.

13 THE COURT: Okay. Muted by CourtCall or she muted it?

14 OPERATOR: Hello Ms. Carter.

15 MS. CARTER: Hello. My line is not muted.

16 THE COURT: Okay. Ms. Carter, this is the Judge. Can
17 you hear me now?

18 MS. CARTER: Yes, I can hear you.

19 THE COURT: Okay. All right. Go ahead, Mr.
20 Smolinsky.

21 MR. SMOLINSKY: Your Honor, in the case of Ms.
22 Carter's claims we need the Court's assistance in sorting them
23 out.

24 We received seven proofs of claim filed by Ms. Carter.
25 They all appear to be substantially similar, if not identical.

1 As we always do, we attempted to reach out to Ms.
2 Carter to better assess if the claims are duplicative or to
3 also assess the nature of the claims. But in those
4 discussions, unfortunately, we were unable to get further
5 detail on the claims or an agreement that the claims are
6 duplicative.

7 Ms. Carter has subsequently submitted many letters to
8 this Court, to the Clerk of the Court, to debtors' counsel and
9 those letters, if you parse through them, hint at a variety of
10 potential claims. We've pulled out a reference to employment
11 claims for hostile working environment but those appear to be
12 claims that were asserted against her employer, Delphi
13 Corporation, which as Your Honor knows is the subject of a
14 separate Chapter 11 case that was pending in the Southern
15 District of New York and unrelated to the General Motors case
16 other than the fact that Delphi, at one point, was a spinoff
17 from General Motors.

18 There's also a reference to a Workers' Compensation
19 claim, also we believe that any such claim would be against
20 Delphi. There was a reference to employee benefits, that claim
21 would also be a claim properly submitted against Delphi. And
22 then there was a reference to a car warranty claim and finally
23 there was a reference to a class action claim relating to Dex-
24 Cool, which is actually on the calendar later today for the
25 approval of a settlement. But it was unclear whether Ms.

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1 Carter was alleging that she was a member of that class.

2 So there were also references in the papers to, or
3 attempts to work with counsel for Delphi and to pursue her
4 claim in the Delphi case, but she may be a bit confused about
5 whether or not GM and Delphi are part and parcel of the same
6 proceeding. But they are not and if these claims are properly
7 against Delphi then the claims should be expunged.

8 So at this point, without the ability to go any
9 further, we'd like to give Ms. Carter the opportunity to
10 explain to this Court what the nature of her claims are and
11 whether there are, in fact, seven different claims or whether
12 they're duplicative of one another.

13 THE COURT: Okay. Ms. Carter can I hear from you,
14 please? I take it you understand that Motors Liquidation
15 Company, which we refer to as Old GM and which you may have
16 thought of as simply GM, is a different company than Delphi and
17 I only have the power to allow claims against Old GM. Any
18 rights you have against Delphi aren't within my power to deal
19 with, one way or the other. So help me, if you would please,
20 Ms. Carter.

21 MS. CARTER: Yes. I do understand that. My question
22 -- Okay. When I first put in these claims I don't know, okay,
23 it started out with Delphi and the claim that I had against
24 them was in another bankruptcy court under another judge. And
25 then I was receiving letters from General Motors stating that I

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1 had to file these proof of claims and then it got separated to
2 all these different numbers.

3 Now, as I was telling their attorney, I can't say what
4 is a duplicate claim if I do not know what are they talking
5 about. And that's why I ask Your Honor if you would be able to
6 decide what a duplicate claim of my proof of claim that the
7 attorneys, General Motors' attorneys was referring to.

8 THE COURT: And I take it you don't have a lawyer to
9 help you, Ms. Carter, am I correct?

10 MS. CARTER: No, because in the beginning I had
11 lawyers which started out with the Delphi and then I was
12 misrepresented and papers got destroyed and lost and no contact
13 was ever done about it.

14 THE COURT: I hear you and I understand the
15 difficulties you've been encountering. But Ms. Carter, my law
16 clerk and I looked at the various things that were troubling
17 you and while we could see that there might have been stuff
18 involving Delphi, we couldn't see any rights you would have
19 against GM, especially any claims that would still be timely
20 because we have under the law what's called a statute of
21 limitations that says that if you go too far without bringing a
22 claim your claim is barred under the law.

23 I want go back over my notes for a second but frankly,
24 Ms. Carter, it looked to me like whatever rights you had were
25 against Delphi and that you didn't have any timely claims

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1 against Old GM. And one thing I should say, even though I'm
2 not allowed to give you legal advice, is it's very common for
3 debtors to send out notice to people so that they can take
4 action to protect their rights in case they might have a claim.
5 But the fact that they sent you a notice doesn't mean that
6 you've got a claim. In fact, if they thought you had a claim
7 they probably would have scheduled it in the first place.

8 So go ahead, Ms. Carter, see if you have any further
9 thoughts you want to share with me.

10 MS. CARTER: Okay. So as far as these claims that he
11 was talking about, the employment hostile, Workers' Comp,
12 employers' benefit and the class action, Dex-Cool that's all
13 under Delphi?

14 THE COURT: Well, in one case I think the class action
15 settlement, you may be a member of the class but somebody else
16 has gone to bat for you on that, a class action representative.
17 Although I would invite Mr. Smolinsky to correct me if I'm
18 mistaken in that regard.

19 MR. SMOLINSKY: Your Honor, there is a class counsel.
20 She's actually in the courtroom today. She's probably not here
21 with knowledge as to whether Sharyl Carter has filed a timely
22 claim under the class.

23 THE COURT: Class action-wise.

24 MR. SMOLINSKY: That's correct, Your Honor.

25 THE COURT: In other words, to participate in the

1 class action settlement.

2 MR. SMOLINSKY: Correct, Your Honor. And there was a
3 deadline in which to file claims against that pool or you would
4 be time barred from that claim as well. We could certainly
5 endeavor to look to see whether Ms. Carter filed a timely claim
6 against the class.

7 THE COURT: Okay. Back to you, Ms. Carter. Do you
8 have further thoughts to share with me because I want to give
9 you a fair shake here but -- even though I'm not supposed to be
10 looking out for individual claimants and doing their work for
11 them, I did want to make sure that because you had no lawyer
12 the court was treating you fairly and I'm having trouble seeing
13 any claims that you might have here.

14 MS. CARTER: Okay. Yes, I understand. Yes, I would
15 just like to know if I -- if I am participating in the two
16 claims that they were talking about, otherwise, I mean, I
17 wasn't aware of them or notified as far as the class action,
18 even though I responded back to them and gave them information
19 with the car, the Dex-Cool, that was considered my car

20 THE COURT: Uh-huh. Any further thoughts you want to
21 share with me, Mr. Smolinsky?

22 MR. SMOLINSKY: No, Your Honor. We're happy to look
23 at both the list of class action claimants as well as those who
24 submitted timely opt outs. If she's in one of those groups her
25 claims could be preserved, otherwise they would be barred.

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1 We're happy to look into that and send Ms. Carter a
2 letter to that effect, within a week.

3 THE COURT: Uh-huh. Okay. Any other thoughts by
4 anybody before I rule on this?

5 (No response)

6 THE COURT: Okay. All right. Folks, I have a
7 decision that I could dictate, it will take me a while to do
8 it. I think what might be better for all concerned is for me
9 to summarize it and then if you would like me, Ms. Carter, to
10 dictate the full decision; I'll do that at the end of today's
11 calendar.

12 But basically the situation is this, Ms. Carter, as we
13 understand it you filed seven separate proofs of claim. Six of
14 the seven appear to be duplicative but apart from that your
15 claims suggest that with one potential exception to -- if they
16 have merit they're claims against Delphi rather than General
17 Motors.

18 I will say, so there can be no doubt, that whatever I
19 say here has nothing to do with your claims against Delphi.
20 But because, after our review of your claims, we can't see -- I
21 can't see any timely claims against GM, I'm going to have to
22 disallow them. I imagine you might want a more detailed
23 explanation and I'll give you a full explanation at the end of
24 today's calendar.

25 Do you want to stay on the line and just wait for

1 that, Ms. Carter?

2 MS. CARTER: Yeah.

3 THE COURT: Of course. I understand. Okay.

4 MR. SMOLINSKY: Your Honor, what I would suggest is to
5 look into the Dex-Cool situation before submitting or settling
6 an order on Ms. Carter. And as normally, the appeal period
7 would run from the entry of the order as opposed to this
8 decision.

9 THE COURT: That's correct. I think that's a good
10 idea, Mr. Smolinsky. Let's do that.

11 (Phone interference)

12 THE COURT: I'm sorry.

13 (Phone interference).

14 THE COURT: I think somebody's speaking but it's
15 inaudible to me but it didn't sound like Ms. Carter. Was it
16 somebody else?

17 MS. CARTER: It wasn't on my line.

18 THE COURT: Yeah, I understand, Ms. Carter. Okay.
19 Ms. Carter, if you would just wait, please.

20 By the way, are the debtors -- is this call at Ms.
21 Carter's expense?

22 MR. SMOLINSKY: I don't know. I received the letter
23 that she was having trouble and we called her yesterday. I
24 believe she said that she had already paid for participation.

25 THE COURT: And the more I make her wait the more

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1 she's going to have to pay?

2 MS. CARTER: Yeah.

3 THE COURT: All right. I would like to see, since I'm
4 making her wait, that we could not make her bear the expense.
5 What's your recommendation, Mr. Smolinsky? That you could ask
6 CourtCall to re-bill the debtor for this or that I just dictate
7 the full decision now, or what?

8 MR. SMOLINSKY: We would be happy to pick up the cost
9 of the call.

10 THE COURT: Okay. Ms. Carter, we're going to have
11 CourtCall bill the debtor for this instead of you, so that it
12 doesn't cost you any money to stay on the line.

13 MS. CARTER: Okay.

14 THE COURT: All right. Go on to your next matter,
15 please, Mr. Smolinsky.

16 MR. SMOLINSKY: Your Honor, item number 2 on the
17 agenda is a motion to expunge the claim of Stanley Stasko. Is
18 Mr. Stasko on the phone or in the courtroom?

19 MR. STASKO: On the line.

20 THE COURT: Okay. I hear you, Mr. Stasko. Stand by
21 and I'm going to invite you to speak in a moment.

22 THE COURT: Your Honor, the sum and substance of Mr.
23 Stasko's claim is that he was discriminated by General Motors
24 Corporation during his tenure as a General Motors engineer
25 between 1983 and 1995 because he was not hired initially at the

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1 right level and did not receive promotions as quickly as he
2 believes he should have, due to alleged religious persecution.

3 Mr. Stasko did not assert a claim in any judicial
4 forum until December of 2009 when he filed an action in the
5 United States District Court in Michigan, asserting violations
6 under 42 U.S. 1983.

7 Your Honor will recall that a belated motion to lift
8 the stay was filed by Mr. Stasko which was denied by this
9 Court, and that ruling is presently on appeal to the district
10 court.

11 After the appeal was filed and approximately six
12 months after the bar date, Mr. Stasko filed a single proof of
13 claim against the debtors with this court. As the
14 representative of the Motors Liquidation Company, GUC Trust who
15 is the successor, as I said earlier --

16 THE COURT: Just a minute, please, Mr. Smolinsky. I
17 need everybody on the phone to stay totally quiet. If I get
18 more noise in my courtroom I'm going to tell CourtCall to
19 silence everybody except Mr. Stasko.

20 Continue please, Mr. Smolinsky.

21 MR. SMOLINSKY: Thank you. Is it okay if I use GUC
22 Trust? I know you don't like shorthand.

23 THE COURT: You know I had acronyms but I'm used to
24 GUC Trust enough so you can use GUC trust.

25 MR. SMOLINSKY: Thank you, Your Honor. So on behalf

1 of the GUC Trust we seek to expunge this claim.

2 Putting aside, for a moment, the merits of the claim,
3 the debtors have taken the position that this claim is time
4 barred, not only because the claim was filed after the bar date
5 but because the facts and circumstances giving rise to the
6 claim occurred between 1983 and 1995, well outside of any
7 recognized statute of limitations that would apply under these
8 circumstances.

9 Under 42 U.S. 1983, which is the legal foundation and
10 basis for his claim, the Supreme Court in Wilson vs. Garcia
11 found that the appropriate statute of limitations was a federal
12 statute of three years for any claim under that statute.

13 Of course, as indicated in our papers, we don't
14 believe that this statute is applicable to this case because we
15 believe it only applies to actions taken under federal or state
16 authority or color of law. But nevertheless, in our papers we
17 cited to other Michigan statutes of limitations relating to
18 such claims as employment discrimination and those claims would
19 likewise carry a three-year statute of limitations.

20 So more than fourteen years have now passed since the
21 resignation of Mr. Stasko from GM and the filing of the
22 Michigan action. So how does Mr. Stasko address this obstacle
23 to his claim? He claims that he lost his memory and did not
24 get back his memory until 2005. Therefore, under general
25 reasons of insanity he believes that the statute of limitations

1 was tolled as to the claim until 2005.

2 Mr. Stasko, although he provides in excruciating
3 detail, the facts and circumstances leading up to the alleged
4 discrimination, but he doesn't describe the nature of the loss
5 of the memory or the precipitating event or the timing of that
6 event, nor does he provide medical support for his claim.

7 To the contrary, during the period after 1995 Mr.
8 Stasko graduated with a college degree from a seminary, got
9 married, held several jobs. He even wrote two books that are
10 now available on amazon.com.

11 But even assuming that this was true and he lost his
12 memory for the entire period from --

13 THE COURT: Pause please, Mr. Smolinsky. When did Mr.
14 Stasko do all of that stuff?

15 MR. SMOLINSKY: If you look at the materials that he
16 submitted with his claim, he gives details about what happened
17 after he left General Motors. So he talks about his marriage,
18 that coincided with his ten year anniversary of his high school
19 graduation. You have to piece things together but he does talk
20 about jobs that he held after he left General Motors and other
21 details about his life. I'm sure he can speak in greater
22 detail about this period.

23 But even assuming that this was true, he lost his
24 memory and he lost his memory for the entire period from 1995
25 to 2005, the statute of limitations for any possible claim

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1 would have run in 2008. Despite Mr. Stasko's assertions that
2 there is an applicable six year statute of limitations, we
3 don't believe that that's the case in any claim that's been
4 asserted.

5 Moreover, Mr. Stasko alleges in his complaint that the
6 discrimination started immediately when he joined General
7 Motors when he was asked to join at a level that was too low
8 and a lot of the discrimination happened in the early part of
9 his career. What's interesting is the statute would have been
10 running during the time that he was actually working at General
11 Motors, unless he takes the position that he was incapacitated
12 during the time he was working at GM and that would have been
13 inconsistent with the notion that he was entitled and should
14 have earned various promotions in that state.

15 Mr. Stasko's additional argument as to why the statute
16 of limitations would be tolled is based on discovery abuses.
17 He claims that he asked for his employment records and they
18 weren't delivered. Now those records were not requested during
19 the period of time -- during any pending court hearing so it
20 was simply a request for information and any information that
21 was in his employment records would not give rise to the action
22 he already knew what his potential claims were, all that those
23 employment records would do is provide evidence supporting his
24 claim.

25 So I don't think that any statute of limitations would

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1 be tolled as a result of any delay, even if it was -- even if
2 it occurred during litigation.

3 THE COURT: Pause, Mr. Smolinsky. I thought some
4 documents were given to him?

5 MR. SMOLINSKY: They were ultimately given but he
6 claims that it was tolled for a period of time after 2005. So
7 he got his memory back in 2005, he then started requesting the
8 information. And I just want to be clear that if he got the
9 information within three years, that he still doesn't have a
10 valid claim under applicable statute of limitations.

11 He also asserts that there was fraudulent concealment
12 in the failure, initially, to deliver those documents. And
13 again, those documents would only support his claim, would
14 not -- would not give rise to his claim.

15 At this point, rather than delve into the merits of
16 the case and I know this is not an evidentiary hearing today,
17 we believe that based on the law and the statute of
18 limitations, this claim could be expunged. But I think at this
19 point it makes sense to sit and let Mr. Stasko address the
20 statute of limitations issue.

21 THE COURT: Okay. Mr. Stasko?

22 MR. STASKO: I would like to address several issues,
23 because there's, I believe, some errors on General Motors'
24 part. Just from what General Motors said, my memory did not
25 come back in calendar year 2005. I was not able to represent

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1 myself in court until approximately October of 2009. That's
2 where the marriage, an unconsummated marriage, that took place
3 between 1985 and 1990.

4 I will get into my oral arguments now. I have about -
5 - I will begin -- Stanley R. Stasko's proof of claim was filed
6 in the U.S. Bankruptcy Court, Southern District of New York via
7 U.S. mail on April the 28th, 2010, approximately 149 days after
8 the bar date of November 30th, 2009.

9 Reason number one -- I'm going to be giving ten
10 reasons why my proof of claim should be accepted because I know
11 that the delay for filing seems insignificant.

12 This delay seems insignificant considering Stanley R.
13 Stasko is a pro se litigant and Title 28 of the U.S.C., section
14 1554 states implicit in right to self representation is
15 obligation, emphasis on the word obligation, on the part of the
16 Court to make reasonable allowance to protect pro se litigants
17 from inadvertent forfeiture of important rights because of
18 their lack of legal training.

19 The U.S. Court of Appeals, Second Circuit, made a
20 similar statement in Triestman vs. Federal Bureau of Prisons,
21 470 F.3d 471. Additional references can be found in Stanley R.
22 Stasko's response to the debtors' objection to proof of claim
23 number 70285, case filing number 9250, Exhibit 4, paragraphs
24 83, 84, 85, 86, 87 and 88.

25 Second reason; of the actual notification of bar dates

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1 by General Motors not typical information avenues for Stanley
2 R. Stasko. In the debtors' objection to proof of claim number
3 70285, electronic case filing 9095, the debtor states the
4 debtor published notice of the bar dates in nine publications
5 including, without limitation, "The Financial Times", "The Wall
6 Street Journal", "The New York Times National", "USA Today",
7 "Detroit Free Press" and "Detroit News".

8 The U.S. Bankruptcy Court should be informed that
9 Stanley R. Stasko does not subscribe to these publications like
10 the "Financial Times", "The Wall Street Journal", "The New York
11 Times National", "USA Today", "Detroit Free Press", "Detroit
12 News". Therefore, these publications would not be typical
13 avenues for Stanley R. Stasko to be informed regarding bar
14 dates associated with General Motors Corporation. Further,
15 Stanley R. Stasko does not own what is commonly known as a
16 television, nor has he for years.

17 Now I'll get into the -- what I consider the
18 applicable statutes of limitation. In the debtors' reply to
19 Stanley R. Stasko's response to debtors' objections to proof of
20 claim 70285, debtor states on page 3, paragraph 4, "As this
21 Court recently noted in rulings on a similar claim objection in
22 these Chapter 11 cases, a claim must be allowed before it is
23 barred under the statute of limitations, B, electronic case
24 filing 9598."

25 In my opinion this is an obvious reference to the

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1 hearing and the U.S. Bankruptcy Court Southern District of New
2 York on March the 1st, 2011. From what I remember, this
3 quotation is from a product liability claim where the claimant
4 alleges is a sudden loss of power in his vehicle.

5 Reason three; there are two differences between this
6 claim that's on March 1st, 2001 and Stanley R. Stasko's claim.
7 The first difference is that Stanley R. Stasko worked for
8 General Motors Corporation in the State of Michigan while the
9 other claim occurred in another state.

10 The second difference is that the bankruptcy judge
11 pointed out the fact that the claimant received actual
12 notification by the debtors while Stanley R. Stasko did not
13 receive any actual notification.

14 Further, Stanley R. Stasko did not receive actual
15 notification even though General Motors Corporation was
16 informed of a possible lawsuit in calendar year 2005. For
17 additional details see Stanley R. Stasko's response to debtors'
18 objection to proof of claim number 70285, electronic case
19 filing 9250, Exhibit 4.

20 THE COURT: Pause please, Mr. Stasko. Did you bring a
21 lawsuit in 2005?

22 MR. STASKO: I tried to but a lawyer would not accept
23 my case and I was nowhere near -- my memory was nowhere near
24 where I could even come close to representing myself.

25 May I continue on?

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1 THE COURT: No. I'm thinking. Just a minute, please.

2 (Pause)

3 THE COURT: What -- you say a lawyer wouldn't take on
4 your case, did either you or the lawyer who ultimately decided
5 not to take case tell GM that you wanted to sue them then?

6 MR. STASKO: No. Once they found out that I left
7 General Motors in 1995, at this time it was, like, calendar
8 year 2005, they didn't even want to hear the case. And when I
9 would call them back they wouldn't even return my phone calls.

10 THE COURT: The they being the lawyer?

11 MR. STASKO: That is correct. The lawyer wouldn't
12 even return my phone call. They showed no interest in the case
13 whatsoever. And I was in no condition, mentally, to represent
14 myself in any way, shape and form in 2005.

15 THE COURT: Go on, please.

16 MR. STASKO: Okay. For additional details see Stanley
17 R. Stasko's response to debtors' objection to proof of claim
18 number 70285, electronic case filing 9250, Exhibit 4,
19 paragraphs 23 through 33 with an emphasis on paragraphs 29 to
20 32.

21 Now I'll give my position regarding what I think the
22 statute of limitations are for a civil suit, Stasko versus
23 General Motors Corporation in the U.S. District Court in the
24 Eastern District of Michigan.

25 THE COURT: Well pause please, Mr. Stasko, because I

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1 thought that was in violation of the automatic stay and I told
2 you you had to bring that lawsuit to a full stop.

3 MR. STASKO: And the judge in the Eastern District of
4 Michigan, he did not accept your ruling and he administratively
5 closed the case so the case can be reopened at any time by
6 either party at the end of the bankruptcy proceeding itself.

7 THE COURT: Go on.

8 MR. STASKO: Okay. Okay. The civil suit was filed
9 under Title 42, U.S.C. Section 1983 in the U.S. District Court
10 Eastern District of Michigan. Paragraphs 58, 59 and 60 of the
11 original suit complaint filed on December 11, 2009 concluded by
12 stating that the plaintiff, Stanley R. Stasko, requests the
13 Court to award the plaintiff approximately 2.7 million dollars
14 for estimated loss by the plaintiff for actual work performed,
15 emphasis added, at General Motors Corporation from
16 approximately July 1983 to August 1995. I've got to flip the
17 page.

18 Plaintiff requests the Court to award the plaintiff an
19 unspecified amount for unique solutions accomplished by the
20 plaintiff, emphasis on unique solutions, while working at
21 General Motors Corporation from approximately July 1983 to
22 August 1995.

23 Plaintiff requests the Court to award the plaintiff an
24 unspecified amount for major accomplishments by the plaintiff,
25 emphasis added, while working at General Motors Corporation

1 from approximately July 1983 to July 1995.

2 And the last point was, the plaintiff requests the
3 Court to award the plaintiff an unspecified amount in punitive
4 damages for hostile work environment by General Motors
5 Corporation against Stanley Stasko from approximately July 1983
6 to July 1995.

7 Therefore the Court can see that three out of four
8 concluding paragraphs of the civil suit summarize actual loss
9 by the plaintiff, Stanley R. Stasko. Since Title 42, U.S.C.
10 Section 1983 does not specify a statute of limitations for
11 recovery of damages by an employee from an employer;
12 nevertheless we can look to the State of Michigan for statutes
13 of limitations in Stanley R. Stasko who worked his entire
14 career for General Motors Corporation in the State of Michigan.

15 In the State of Michigan, MCLA 600.5807(a) states that
16 the period of limitations is six years for all other actions to
17 recover damages, emphasis added, for sums due for breach of
18 contract.

19 Now I'll get into the tolling of the statute of
20 limitations. Reason number four, tolling of statute of
21 limitations or discovery delays. In the State of Michigan
22 discovery rule postpones beginning, the beginning, emphasis
23 added to the word beginning, of the limitations period from the
24 date when the plaintiff is wronged to the date when he
25 discovers he has been injured. Therefore, since Stanley R.

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1 Stasko first began discovery of an injury and loss he incurred
2 by General Motors on September 1st, 2005, therefore the statute
3 of limitation does not expire on September 1, 2011. And
4 emphasis needs be added that September 1, 2011 is nearly two
5 years later than the bar date of November 30th, 2009
6 established by the U.S. Bankruptcy Court.

7 Reason number 5, tolling of statute of limitations for
8 mental disability. In the State of Michigan, MCLA 600.5851,
9 paragraph -- (5) states, shall count the year of grace from the
10 termination of the last disability since Stanley R. Stasko's
11 loss of memory was cleared up enough for him to represent
12 himself as a pro se litigant approximately October 2009.
13 Therefore, since the statute of limitations does not expire
14 until October 2010, the emphasis needs to be added that October
15 2010 is nearly one year later from the bar date of November
16 30th, 2009.

17 Reason number 6, tolling of statute of limitations for
18 fraudulent concealment. In the State of Michigan, MCLA
19 600.5855 states if a person who is or may be liable for any
20 claim fraudulently concealed the existence of a claim or the
21 identity of any person who is liable for the claim, and the
22 knowledge of the person entitled to sue on the claim, the
23 action may be commenced at any time within two years after the
24 person who is entitled to bring the action discovers or should
25 have discovered the existence of a claim or the identity of the

1 person who is liable for the claim.

2 Although the action would have otherwise been barred
3 by the period of limitation, since Stanley R. Stasko was first
4 able to represent himself as a pro se litigant to explain the
5 depth of the fraudulent concealment by General Motors, and
6 began to be able to explain that fraudulent concealment in
7 October 2009, therefore the statute of limitations does not
8 expire until October of 2011. An emphasis needs to be added
9 that October 2011 is nearly two years after the bar date of
10 November the 30th, 2009.

11 Excusable neglect. In the debtors' objection to proof
12 of claim 70285, electronic case filing 9095, page 10, paragraph
13 21, the debtor states whether excusable neglect exists in any
14 particular case hinges on five factors. I will be addressing
15 each of these factors.

16 The first factors is the degree of prejudice to the
17 debtors. This factor is so much of the argument made by
18 General Motors Corporation in the appellee's legal brief filed
19 in the U.S. District Court, Southern District of New York in
20 which they state that the burden imposed on the debtor in terms
21 of time, financial resources and have pledged, if necessary, to
22 defend against the Michigan action, far outweighs any potential
23 gain to Stanley R. Stasko in proceeding with the Michigan
24 action against the debtors. Given that the appellant did not
25 file a timely proof of claim against the debtor and therefore

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1 is barred from seeking any recovery from the debtors for
2 referencing Stanley R. Stasko's response to debtors' objection
3 to proof of claim 70285, electronic case filing 9250, Exhibit
4 5, paragraph 21.

5 The bankruptcy court can find Stanley R. Stasko's
6 detailed reply and Stanley R. Stasko's response to debtors'
7 objection to proof of claim 70285, electronic case filing 9250,
8 Exhibit 5, paragraphs 22 through 36.

9 But in summary I'll just state that Stanley R.
10 Stasko's position is that there's no prejudice to the debtors
11 because at the time financial resources and intention necessary
12 to defend against the Michigan action was self-inflicted by
13 General Motors when General Motors Corporation purposefully,
14 fraudulently concealed Stanley R. Stasko's accomplishments from
15 approximately July 1983 to August 1995.

16 Reason number eight, the length of the delay and the
17 reason for the delay. First, Stanley R. Stasko did not know
18 that a proof of claim -- what a proof of claim is. The Court
19 can reference his comments at the bankruptcy court transcript
20 on April 8, 2010, electronic case filing 5509, page 38, lines
21 number 15. I'll just read the first line, I'm quoting what I
22 said, "What I want to ask the Court is this, is that this proof
23 of claim is some sort of form that I could have obtained
24 online. I didn't even know what a proof of claim was."

25 Second, the bankruptcy court was informed of the

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1 reasons for the length of delay when Stanley R. Stasko motioned
2 for the U.S. Bankruptcy Court, Southern District of New York
3 for relief from automatic stay, when he submitted to the
4 bankruptcy court a copy of 500-plus pages of the original
5 complaint in Stasko versus General Motors explaining in detail
6 the delay of a civil suit including mental disability,
7 discovery delay and fraudulent concealment by General Motors.

8 Reason nine, whether claimant acted in good faith.

9 Stanley R. Stasko's position is that he acted in good faith by
10 filing civil suit, Stasko vs. General Motors Corporation on
11 December 11th, 2009 as his memory just cleared up enough to
12 defend himself in calendar 2009.

13 The bankruptcy court needs to understand that the
14 majority of the original complaint, the majority of the work
15 that I've done in all these cases occurred after my memory
16 started to clear up in calendar year 2009, and I've submitted
17 to the U.S. Bankruptcy Court Southern District of New York.

18 Also, if I had skipped all the details and all the
19 legal arguments of civil suit Stanley R. Stasko vs. General
20 Motors Corporation and submitted a simple summons in complaint,
21 could have been filed -- I could have submitted a simple
22 summons and complaint in the U.S. District Court in mid-October
23 2009 to mid-November 2009, but that would have just been a
24 simple summons and complaint.

25 Without the details behind the discovery delay, the

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1 mental disability, the fraudulent concealment by General Motors
2 and legal arguments for tolling the appropriate statutes of
3 limitation one could argue why the U.S. District Court Eastern
4 District of Michigan might not even have heard Stasko vs.
5 General Motors.

6 And reason number 10, under excusable neglect, if the
7 claimant had counsel, Stanley R. Stasko has been a pro se
8 litigant and in the civil suit, Stasko vs. General Motors,
9 Stanley R. Stasko has been a pro se litigant and the U.S.
10 Bankruptcy Court Southern District of New York. And Stanley R.
11 Stasko is a pro se litigant in the U.S. District Courts and the
12 appeal itself.

13 Thank you very much.

14 THE COURT: All right. Thank you, Mr. Stasko. Mr.
15 Smolinsky, do you wish to reply?

16 MR. SMOLINSKY: Joe Smolinsky, Your Honor.

17 I don't really know where to start, there's a lot
18 here. The one thing that I didn't hear, which is Mr. Stasko's
19 burden, is to take us through the mental incompetency, when it
20 began. We still have fourteen years to deal with in terms of
21 tolling of the statute of limitations and that's Mr. Stasko's
22 burden.

23 At this point I don't feel I need to get into the
24 merits. The essay, which is attached to the papers, I think
25 lays out a lot of the factual background. I have no way of

1 verifying its truth but I think -- I do think it speaks a lot
2 as to the ultimate merits of his claims.

3 But maybe the place that we should start is the
4 statute of limitations and maybe take this in baby steps. And
5 to the extent that Your Honor is not prepared to expunge the
6 claim today, to have a trial on the statute of limitations
7 issue and get into the facts of as to why he believes that the
8 statute of limitations has been tolled for so long.

9 I don't know how else to deal with that issue up
10 front, because I haven't heard the basis for that tolling.

11 THE COURT: Okay. Anything else, Mr. Smolinsky?

12 MR. SMOLINSKY: No, Your Honor. Only to say that the
13 other issue that I think is missed by Mr. Stasko is when the
14 incapacity began. And looking back at all the different
15 claims, he noticed the unique solutions claim which is
16 developments that were made at some point during his career, to
17 the extent, again, that the time -- the statute of limitations
18 tolled or expired before his mental incapacity that he's
19 alleging, those claims would be time barred.

20 You need to get into the weeds here but I think the
21 preliminary gating item, gating issue, for me is whether the
22 statute of limitations has been tolled by virtue of the mental
23 incapacity.

24 THE COURT: All right. Thank you.

25 MR. SMOLINSKY: Thank you.

1 THE COURT: All right. Everybody sit in place for a
2 minute.

3 (Pause)

4 THE COURT: In this contested matter in the jointly
5 administered Chapter 11 cases of debtor, Motors Liquidation
6 Company, formerly General Motors Corporation, which I refer to
7 as Old GM and its affiliates, the debtors object to the proof
8 of claim filed by Stanley Stasko.

9 His proof of claim seeks recovery on a cause of action
10 that he asserted against the debtors in the Eastern District of
11 Michigan under 42 U.S.C. Section 1983, and I underscore that
12 particular statutory provision, in a lawsuit that was brought
13 in violation of the automatic stay and where I ordered that
14 relief from the stay not be granted and indeed that Mr. Stasko
15 bring that lawsuit to a halt.

16 The debtors object to Mr. Stasko's proof of claim on
17 multiple grounds, some of which are before me today. First,
18 that the proof of claim was filed after the bar date and Mr.
19 Stasko failed to seek leave to file a late proof of claim.

20 Second, that the cause of action underlying his proof
21 of claim is barred by the applicable statute of limitations.
22 And third, that the complaint and cause of action underlying
23 his proof of claim failed to state a claim upon which relief
24 could be granted.

25 Mr. Stasko asserts that due to mental problems he did

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1 not discover the alleged injury that he incurred until
2 September 2005 and that he was not able to represent himself in
3 court until October 2009. As a result, Mr. Stasko argues, the
4 statute of limitations for a Section 1983 cause of action was
5 tolled and his complaint was timely filed.

6 He also asserts that he never received actual notice
7 of the bar date in this case and that his memory and mental
8 problems establish excusable neglect such that he should be
9 permitted to file a late proof of claim.

10 Folks, I rule that to the extent, if any, to which Mr.
11 Stasko at one time had valid claims against the debtors, a
12 matter as to which I now express no opinion, the statute of
13 limitations for any such claims expired, at the latest, in 2008
14 which was two years before he filed that 1983 complaint against
15 the debtors.

16 Therefore, the debtors' request for an order
17 disallowing and expunging that claim is granted. The objection
18 to the claim is sustained.

19 My findings of fact and conclusions of law in
20 connection with this determination follow, turning first to my
21 findings of fact. Mr. Stasko resigned as an employee of
22 General Motors on August 25, 1995, that's sixteen years ago.
23 Beginning in 2005, Mr. Stasko contacted General Motors numerous
24 times by mail seeking a complete copy of his employment records
25 pertaining to his work for Old GM.

1 In his third request for his employment records, sent
2 on August 24, 2005, Mr. Stasko stated that he was requesting
3 the information to "Look for possible discrimination by General
4 Motors against Stanley R. Stasko (it is Stanley R. Stasko's
5 opinion that he can compile a reasonable argument that he
6 should have been one or more levels higher than he was at the
7 time of his departure)."

8 Mr. Stasko sent a copy of that letter to one of GM's
9 attorneys which, as Mr. Stasko explained in his papers, was to
10 inform General Motors legal staff of a possible lawsuit. In
11 response to these requests, in September 2005, Mr. Stasko
12 received a package containing some or all of his employment
13 records from General Motors.

14 On September 16, 2009 I entered an order establishing
15 November 30, 2009 as the bar date, that is the deadline for
16 proofs of claim in this case. The debtors published notice of
17 the bar date in nine publications, including the "Detroit Free
18 Press", "Detroit News", "New York Times", "USA Today",
19 "Financial Times" and "The Wall Street Journal". Mr. Stasko
20 did not file a proof of claim before the November 30, 2009 bar
21 date.

22 In December 2009, without seeking relief from the
23 automatic stay in this court, Mr. Stasko filed a lawsuit in the
24 Eastern District of Michigan against General Motors alleging a
25 cause of action under 42 U.S.C. Section 1983 for "Deprivation

1 of rights" and seeking monetary compensation of at least 2.7
2 million dollars "For the estimated loss by the plaintiff for
3 actual work performed at General Motors Corporation from
4 approximately July 1983", July 1983 being almost twenty-eight
5 years ago, to August 1985, being almost sixteen years ago and
6 "Punitive damages for a hostile work environment."

7 Mr. Stasko attached as an exhibit to the complaint an
8 essay which recounts, among other things, experiences that he
9 allegedly had while working at General Motors including
10 numerous alleged incidents of discrimination and harassment.

11 His Michigan complaint further stated that "The events
12 giving rise to this complaint occurred at what is commonly
13 known as the General Motors Technical Center, Warren, Michigan,
14 Macomb County, from approximately September 7, 1978 to
15 approximately August 14, 1979 and from approximately July 18,
16 1983 to approximately August 25, 1995. The 1983 civil action
17 was the only cause of action asserted in Mr. Stasko's complaint
18 in the Eastern District of Michigan.

19 On February 19, 2010, Mr. Stasko filed a motion in
20 this court to lift the automatic stay and proceed with the
21 Michigan District Court litigation. After hearing oral
22 argument, I denied Mr. Stasko's motion to lift the stay and
23 ordered Mr. Stasko to withdraw his lawsuit in Michigan entirely
24 and not allow it merely to be stayed. That, of course, being a
25 material part because this was not a pre-petition lawsuit that

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1 lingered after the filing of the bankruptcy case but was as
2 blatant a violation of the stay as I have seen in more than ten
3 years on the bench.

4 On April 12, 2010 Mr. Stasko appeared at a hearing in
5 the Eastern District of Michigan seeking entry of an order of
6 default against General Motors. Upon receiving notice of my
7 decision denying Mr. Stasko's motion to lift the automatic
8 stay, the Eastern District of Michigan court dismissed the
9 lawsuit but advised Mr. Stasko that once the bankruptcy stay
10 had been lifted he could reinstate his case. The Eastern
11 District of Michigan court subsequently issued an order to that
12 effect.

13 On May 3rd, 2010, Mr. Stasko appealed my ruling
14 denying his motion for relief from the automatic stay to the
15 district court. So far as I'm aware, no ruling on that appeal
16 has yet been issued.

17 On May 12th, 2010, without seeking leave from this
18 Court, Mr. Stasko filed a proof of claim seeking nearly 2.8
19 million dollars in damages in the "Amount of claims" box on his
20 proof of claim form Mr. Stasko wrote, "Final amount by U.S.
21 District Court, Eastern District of Michigan." And in the
22 "Basis for claims" box, Mr. Stasko wrote "Civil lawsuit case
23 number 2:09-cv-14827: Eastern District Michigan." Attached to
24 the proof of claim was his complaint and exhibits from the
25 Eastern District of Michigan 1983 action.

1 Turning now to my conclusions of law. Section
2 502(b)(1) of the Code states that when an objection has been
3 made to a proof of claim the court, after notice and a hearing,
4 shall allow the claim "Except to the extent that such claim is
5 unenforceable against the debtor and property of the debtor
6 under any agreement or applicable law for a reason other than
7 because such claim is contingent or unmatured."

8 In order to determine whether claims are enforceable
9 for bankruptcy purposes, we bankruptcy judges and Section 502
10 look to non-bankruptcy law. See, for example, *In re Combustion*
11 *Engineering, Inc.*, 391 F.3d, 190-245, note 66, (3rd Cir. 2005)
12 citing *Collier* (ph.). "A claim against the bankruptcy estate
13 will not be allowed in a bankruptcy proceeding if the same
14 claim would not be enforceable against the debtor outside of
15 bankruptcy" *id.*

16 "This district has recognized the authority of the
17 bankruptcy court to apply statute of limitations and related
18 dispositive legal defenses in the disallowance of claims." *In*
19 *re U.S. Lines, Inc.*, 262 B.R. 223, 234, (S.D.N.Y. 2001).

20 Mr. Stasko's proof of claim seeks recovery for, and
21 only for, the claims in the Eastern District of Michigan
22 action. Therefore, if the claims asserted by Mr. Stasko in
23 that action would be barred by the applicable statute of
24 limitations under non-bankruptcy law, then Mr. Stasko's proof
25 of claim must be disallowed in this court.

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1 Any claims that Mr. Stasko would have would be subject
2 to a three-year statute of limitations, at the most. Mr.
3 Stasko asserts that his claim or claims against GM arise under
4 42 U.S.C. 1983. The statute he invoked and under which those
5 claims arise raises its own issues, which form the basis for
6 the debtors' motion or objection based on failure to state a
7 claim upon which relief can be granted. But now I need look
8 only at the statute of limitations issues arising from a claim
9 under that statutory provision.

10 Because 42 U.S.C. Section 1983 does not contain its
11 own statute of limitations period the Supreme Court has
12 directed the federal courts to apply statutes of limitations
13 and tolling principles to determine the timeliness of claims
14 asserted under 1983. See *Wilson vs. Garcia*, 471 U.S. 261, 276-
15 280.

16 The events alleged in Mr. Stasko's complaint all
17 occurred in Michigan. He is a resident of Michigan. Michigan
18 is the state which has the most important interest in
19 determining the issues here before me.

20 The Sixth Circuit has held that the "Appropriate
21 statute of limitations to be borrowed for Section 1983 actions
22 arising in Michigan is the state's three year limitations
23 period for personal injury claims", *Drake vs. City of Detroit*,
24 Michigan, 266, Fed. App. 444, 448, (6th Cir. 2008).

25 Even if Mr. Stasko's complaint were to state claims

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1 arising out of other federal or state statutes or state common
2 law claims, any such possible claims would also be subject to a
3 three year statute of limitations at most, at the longest. To
4 the extent Mr. Stasko's complaint alleges any causes of action
5 under Michigan employment discrimination statutes; the statute
6 of limitations for those causes of action is also three years.
7 See, for example, McGee vs. Daimler Chrysler Corp., 693 N.W.2d,
8 166, 167 (MI 2005).

9 To sustain a claim under the federal employment
10 discrimination statute a party must file a charge of
11 discrimination with the Equal Employment Opportunity Commission
12 within 300 days of the last act of unlawful discrimination.
13 See 42 U.S.C. Section 2000(e)(5)(E)(i).

14 And finally, to the extent Mr. Stasko's complaint
15 asserts tort claims under Michigan law; the statute of
16 limitations for those claims would also be, at most, three
17 years. See Michigan Comp law and Section 600.5805.

18 The claims that Mr. Stasko asserts arose out of events
19 that occurred during his employment with General Motors. That
20 employment ended in August 1995, almost sixteen years ago.
21 Therefore, absent any applicable tolling, if Mr. Stasko had any
22 valid claims against GM he had to bring them by August 1998 at
23 the latest, thirteen years ago.

24 But Mr. Stasko argues that for various reasons the
25 statute of limitations for his claims was tolled. He first

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1 asserts a tolling for mental disability. Mr. Stasko provided
2 medical records showing that he was treated for mental illness
3 in 2003. Michigan law provides that "If the person first
4 entitled to make an entry or bring an action under this act is
5 under eighteen years of age or insane at the time the claim
6 accrues, the person or those claiming under the person, shall
7 have one year after the disability is removed, through death or
8 otherwise, to make the entry or bring the action, although the
9 period of limitations has run, MCLA Section 600.5851.

10 The term "insane" is defined as "a condition of mental
11 derangement such as to prevent the sufferer from comprehending
12 rights he or she is otherwise bound to know and is not
13 dependent on whether or not the person has been judicially
14 declared insane," id.

15 But I find that even if Mr. Stasko suffered from a
16 mental incapacity that would qualify as an insanity under
17 Michigan law at some point in time, the statute of limitations
18 on his claims asserted here, nevertheless, expired.

19 First, and importantly, Mr. Stasko did not establish
20 when his mental illness began. Unless Mr. Stasko's mental
21 illness began in or before 1998 his condition would be
22 insufficient to toll the statute of limitations at all because
23 the statute of limitations would have already expired in that
24 year. A later developed mental illness cannot "revive" an
25 already expired statute of limitations. See O'Neil vs. Remus

1 (ph.), 09-14, 661, 2010 Westlaw, 1463011 at *2, (E.D.M.I.
2 2010).

3 Second, the facts asserted by Mr. Stasko, both in the
4 complaint and again in his response to this motion, clearly
5 establish that his "insanity" as defined under Michigan law
6 ended in 2005 at the latest. Mr. Stasko stated that in 2005
7 his memory cleared up and that he sought legal representation
8 in connection with his claims against GM that same year.

9 The year 2005 was also the year in which Mr. Stasko
10 requested his employment records from GM for the stated purpose
11 of looking into possible discrimination claims he believed that
12 he had against GM. As noted above, he expressed these
13 intentions in a letter sent to General Motors. For these
14 reasons it is clear that Mr. Stasko recognized possible legal
15 claims that he had in 2005. Obviously he could no longer have
16 had mental illness that "prevented him from comprehending his
17 rights" at that time he thought he had rights.

18 Mr. Stasko also asserts in his papers that his memory
19 would not clear up enough for him to be able to represent
20 himself until October 2009. However, whether or not Mr. Stasko
21 was able to represent himself is irrelevant with respect to the
22 tolling for mental disability under Michigan law, which turns
23 on insanity, as previously noted. The tolling for insanity
24 only applies for as long as the person cannot comprehend his
25 legal rights. And in light of the fact that Mr. Stasko himself

1 provided -- excuse me, the facts that he himself provided, he
2 was no longer insane in 2005. Therefore, the statute of
3 limitations began running in 2005, at the latest, and his
4 claims expired three years later, in 2008.

5 Mr. Stasko also asserts that the statute of
6 limitations was tolled for his claims because General Motors
7 fraudulently concealed the facts underlying his causes of
8 action. Under Michigan law if a person who is or may be liable
9 for any claim fraudulently conceals the existence of the claim
10 or the identity of any person who is liable for the claim from
11 the knowledge of the person entitled to sue on the claim, the
12 action may be commenced at any time within two years after the
13 person who is entitled to bring the action discovers or should
14 have discovered the existence of the claim or the identity of
15 the person who is liable for the claim, although the action
16 would otherwise be barred by the period of limitations, MCLA
17 600.5855.

18 First, I do not believe that General Motors failure to
19 immediately provide employment records to Mr. Stasko upon his
20 request is sufficient to show fraudulent concealment. As
21 stated in his letters to General Motors, Mr. Stasko was
22 requesting the documents because he already thought he might
23 have valid causes of action against General Motors. Therefore,
24 Mr. Stasko already had knowledge of and had discovered the
25 existence of a potential claim and GM's delay in providing the

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1 records did not conceal the existence of potential claims but
2 it only delayed his receipt of evidence that conceivably might
3 support those claims if and to the extent the claims that he
4 thought he had or might have already had merit.

5 Even if General Motors delay in giving Mr. Stasko his
6 employment records is sufficient to establish fraudulent
7 concealment, GM provided him with the requested documents in
8 September 2005. Michigan's tolling for fraudulent concealment
9 provides for a two year tolling once the claim is discovered.
10 Therefore his causes of action expired, at the latest, in
11 September 2007.

12 Finally, Mr. Stasko asserts that the statute of
13 limitations for his claim was tolled because of the common law
14 discovery rule. However, in a 2007 decision the Michigan
15 Supreme Court explained that Michigan does not recognize that
16 common law discovery rule tolling. It stated "Since the
17 legislature has exercised its power to establish tolling based
18 on discovery under particular circumstances but has not
19 provided for a general discovery rule that tolls or delays the
20 time of accrual if a plaintiff fails to discover the elements
21 of a cause of action during the limitations period, no such
22 tolling is allowed", Trent Adieu vs. Buckler Lawn Sprinkler,
23 471 MI 378, 393, 2007. Therefore, this tolling agreement
24 argument fails as well. And even if Michigan did recognize the
25 discovery rule, it would not help Mr. Stasko since, as I've

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1 noted above, to the extent Mr. Stasko had claims against
2 General Motors, he discovered those claims in 2005 at the
3 latest.

4 For all of these reasons I find that even if Mr.
5 Stasko had valid claims against GM the statute of limitations
6 for any such claims expired, at the latest, in 2008, two years
7 before Mr. Stasko filed his complaint against General Motors in
8 the Eastern District of Michigan.

9 Because I so determine, I need not also address his
10 failure to file a timely proof of claim and whether he
11 established excusable neglect in that connection or whether his
12 1983 suit against GM states a claim on which relief can be
13 granted.

14 The debtors' motion to disallow and expunge the proof
15 of claim is granted. The debtors are to settle an order in
16 accordance with that ruling. The time to appeal this
17 determination will run from the time of the entry of the
18 resulting order and not from the time of this dictated
19 decision.

20 All right. Mr. Smolinsky, what's the next matter on
21 your agenda?

22 MR. SMOLINSKY: Your Honor, just on the last matter,
23 would Your Honor consider a provision given the pendency of the
24 district court action to a provision in the order that would
25 bar Mr. Stasko from pursuing any claims against the debtors

1 without first seeking leave of the bankruptcy court?

2 THE COURT: Well at this point the claims allowance
3 process is the only place in which he can bring any claim
4 against Old GM and that's your point I take it?

5 MR. SMOLINSKY: Yes, Your Honor. And I think the --
6 perhaps the thought by Mr. Stasko that the district court has
7 given him leave, as soon as this proceeding is over, to
8 continue to litigate against Motors Liquidation Company6.

9 THE COURT: Mr. Stasko, why shouldn't I grant Mr.
10 Smolinsky's request?

11 MR. STASKO: I don't understand his request.

12 THE COURT: He's saying that your one and only one
13 place where you can obtain any recovery on your claim is here
14 in the United States Bankruptcy Court for the Southern District
15 of New York. And that while the district judge dismissed your
16 Michigan action without prejudice to your bringing a new one,
17 pending further developments in this court, Mr. Smolinsky's
18 saying this is the one and only place where you should be
19 bringing this claim as a matter of bankruptcy law. And my
20 question to you is, is he wrong as a matter of bankruptcy law?

21 MR. STASKO: My response is that the U.S. District
22 Court of the Eastern District of Michigan did not dismiss the
23 case itself. All they did was administratively close the case
24 itself so that after this bankruptcy proceeding is completed,
25 that one or both parties can motion for the case to be

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1 reinstated. So the case has not been dismissed it has been
2 administratively closed so that they don't have to account for
3 it on an accounting basis.

4 THE COURT: Assuming that to be true, Mr. Stasko, I
5 think Mr. Smolinsky's point is that if you were to make such a
6 petition you would be in further contempt of court.

7 MR. STASKO: I don't know how the U.S. District Court
8 Eastern District of Michigan would rule on that.

9 THE COURT: The U.S. District Court for the Eastern
10 District of Michigan doesn't rule on that, I rule on that.

11 MR. STASKO: I see. I'm not a judge, I don't know
12 how -- I don't know how to distinguish between -- I don't know
13 how the Eastern District of Michigan would interpret your
14 ruling itself. They did not agree -- my interpretation is that
15 they did not agree that you had the authority to order me to
16 withdraw the case itself so I don't know how they would
17 interpret this so I can't respond, I really can't respond.

18 THE COURT: Well, the Eastern District of Michigan did
19 not consult me and it did not provide me with a statement of
20 its ruling or its rationale. But I think that it is hornbook,
21 basic, fundamental bankruptcy law that bankruptcy judges have
22 the ability to enforce the automatic stay with respect to cases
23 on their watch.

24 Mr. Smolinsky, your request is granted.

25 MR. SMOLINSKY: Thank you, Your Honor.

1 The next matter on the calendar is the debtors' motion
2 to object to --

3 THE COURT: Pause, please.

4 MR. SMOLINSKY: Yes.

5 THE COURT: Mr. Stasko, you're free to stay on the
6 line as long as you do it quietly, or to drop off, whichever
7 you prefer.

8 (No response)

9 THE COURT: I hear no response. You may continue, Mr.
10 Smolinsky.

11 MR. SMOLINSKY: Thank you, Your Honor.

12 The next motion on the calendar is the debtors' 98th
13 omnibus objection to claims which seeks to reclassify claims
14 from secured or priority status to general unsecured status.
15 Most of this motion has been administered. The remaining claim
16 is a claim filed by Sherif Kodsy and I would ask if he's here
17 today.

18 THE COURT: Do you want to come on up to the table
19 please, sir?

20 MR. KODSY: How you doing, Your Honor.

21 THE COURT: Have a seat and pull the microphone close
22 to you. I'm going to waive the requirement that you have to
23 stand when you speak, just speak into the microphone when it's
24 your turn.

25 MR. KODSY: Thank you, Your Honor.

1 THE COURT: Your Honor, this claim asserts damages
2 caused by an alleged product defect in a Hummer truck,
3 allegedly manufactured by General Motors Corporation. As a
4 result of this alleged defect Mr. Kodsy asserts claims for
5 personal injury, fraud, gross negligence, discrimination, bad
6 faith, perjury and bribery, among other claims.

7 The debtors have not yet fully evaluated the claim,
8 the merits of the claim or decided on an appropriate course of
9 action. But given the fact that this is, in part, a personal
10 injury claim, it would be appropriate to utilize the ADR
11 procedures that this Court has approved and has been working
12 successfully in these cases.

13 In order to have an effective mediation, both parties
14 need to understand the status and nature of the claim from a
15 priority perspective under the bankruptcy code. And there is
16 no doubt to the debtors and to the GUC Trust that this is a
17 general unsecured claim and that Mr. Kodsy, if he was able to
18 prevail on the merits of his claim, would not be entitled to a
19 cash payment equal to the amount of his damages but rather
20 entitled to a general unsecured claim that would allow him the
21 ability to share with similarly situated creditors in the stock
22 and warrants of New GM that have been made available under the
23 plan to general unsecured creditors.

24 Your Honor, Section 506 of the Bankruptcy Code is
25 entitled a determination of secured status. And just reading

1 Section 506(a)(1) it says, "An allowed claim of a creditor
2 secured by a lien on property in which the estate has an
3 interest or that is subject to setoff under Section 553 of this
4 title, is a secured claim to the extent that the value of such
5 creditors interest in the estate's interest in such property or
6 to the extent of the amount subject to setoff, as the case may
7 be, and as an unsecured claim to the extent of the value of
8 such creditors' interest or the amount so subject to setoff, is
9 less than the amount of such allowed claim."

10 So Your Honor, Mr. Kodsy after discussions with us,
11 continues to assert that his claim is entitled to secured
12 status but he provides no basis for the assertion that he has
13 an interest in the estate's interest in any property.

14 It's important to note that under the debtors' plan
15 the only treatment of a secured claim is not the payment in
16 full and cash of the claim, but the debtors are given the
17 option to abandon the debtors' property that secures the
18 creditors' claim. Here, to the extent there is no property so
19 it would be easy to abandon whatever interest he has in estate
20 property and the remainder of his claim would be a general
21 unsecured claim.

22 So Your Honor, we don't think there's any basis for
23 secured claim. We'd like this issue addressed now so that we
24 could proceed in evaluating the claim and trying to liquidate
25 the claim, not under this Court's jurisdiction but pursuant to

1 the ADR procedures that have been established.

2 THE COURT: Okay. Do you want to save the rest of
3 your remarks for reply?

4 MR. SMOLINSKY: Sure. Thank you.

5 THE COURT: Okay. Mr. Kodsy, you needn't stand up.
6 No, you can sit down if you choose to.

7 MR. KODSY: No, I'll stand, Your Honor.

8 THE COURT: Okay. Come to the main microphone if you
9 feel okay about standing. Mr. Kodsy, I'm meaning you no
10 disrespect, do you know what a secured claim is?

11 MR. KODSY: I've done some research, Your Honor, and
12 it is a lien on an estate.

13 THE COURT: Okay. What is the lien that you claim
14 exists?

15 MR. KODSY: Well, my claim -- I have a six-count
16 complaint against the estate. I have a fraud --

17 THE COURT: Bear with me please, Mr. Kodsy. What is
18 the lien that you claim exists that turns your complaint into a
19 secured claim as contrasted to an unsecured claim? Because if
20 I heard Mr. Smolinsky right he's not quarreling that you may
21 have an unsecured claim, although he says that should be
22 determined at another day. But he's saying that whatever you
23 have doesn't have the required lien and therefore you have an
24 unsecured claim rather than a secured claim.

25 MR. KODSY: Yes, Your Honor. That's his argument. I

1 did find some case law, due to the fraud, the nature of the
2 non-disclosed -- the concealments, it becomes, more or less, a
3 lien, a secured lien, just on the fraud and the concealment
4 factors. The malicious -- intentional malicious acts, I could
5 quote Folger Adam Sec., I guess, Inc. vs. DeMatteis/MacGregor,
6 JV, 209 F.3d 252, 258, 259-60 (3rd Cir. 2000) stating under the
7 rule of ejusdim generis, the term other interests would
8 ordinarily be limited to interests of the same kind as those
9 enumerated, examples liens, mortgages, security interests,
10 encumbrances, liabilities and claims that mortgages, security
11 interests, encumbrances and liability possess characteristics
12 similar to a lien and that a lien is distinct from the
13 obligation to secureds.

14 Basically, Your Honor, it so that, you know, it's
15 depending on the issues the lien can be placed not just because
16 it's a structure or an actual property. The bankruptcy --
17 everything is a liquidated property; it's not just an actual,
18 physical object. That was my understanding of it. It's
19 quoting, you know, exceptions on 523. "It says for willful and
20 malicious injury by the debtor to another entity or to the
21 property of another entity, false pretenses, a false
22 representation, actual fraud, other than a statement respecting
23 the debtors or an insider's financial condition."

24 And subchapter 1104, Your Honor, which is the
25 discharge for the bankruptcy or 1141, effect of confirmation --

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1 it quotes 363 "And the entity asserting an interest in property
2 has the burden of proof of validity."

3 So it's basically what I have, Your Honor. It was a
4 design defect and it was totally -- it's just been a fight with
5 them, you know, for the fraud and the concealment and -- which
6 did cause personal injury to the extent where surgery is
7 needed. They actually did the concealment prior to even
8 selling the vehicle; they totally misrepresented the vehicle
9 before even selling it, and after.

10 That's all I have, Your Honor.

11 THE COURT: Okay. Mr. Smolinsky, do you wish to
12 reply?

13 MR. SMOLINSKY: Your Honor, not much. I just rise to
14 advise the Court what the Court already knows with respect to
15 the discharge, 1141. The debtors are not entitled under our
16 plan to a discharge, it's a liquidating case.

17 THE COURT: Because it's a liquidating plan.

18 MR. SMOLINSKY: That's correct, Your Honor. And it
19 doesn't speak as to interests; it speaks as to whether certain
20 claims are accepted from the discharge that would otherwise be
21 granted to a Chapter 11 debtor. But we did not ask for one, we
22 did not get one.

23 The Folger Adams case, I think, is a 363 case, as to
24 whether someone -- whether an interest under 363(f) can be sold
25 free and clear of. I'm not a hundred percent, my memory

1 doesn't serve me fully on that but it's not a case as to
2 whether someone with a general claim, like Mr. Kodsy is
3 entitled to an interest in the debtors' property, for purposes
4 of plan distributions.

5 Thank you, Your Honor.

6 THE COURT: Mr. Kodsy, I'm going to have to grant the
7 debtors' motion to reclassify your claim from a secured claim
8 to an unsecured claim. And although this is very easy from a
9 matter of bankruptcy law, I'm going to burden everybody in the
10 courtroom by taking a few minutes to explain the rationale.

11 In general terms, the Bankruptcy Code recognizes
12 claims of different types depending, in significant part, on
13 whether the creditors underlying rights against the debtor come
14 from a contract that gives it a lien or other secured interest.
15 A lien and security interest are generally the same thing. A
16 mortgage is one kind of a lien or security interest. And the
17 Latin phrase that you quoted, *ejusdem generis*, in fact, talks
18 about different things being thought of together such as liens,
19 mortgages and security interests.

20 But the doctrine upon which you relied does not turn
21 an unsecured claim into a secured claim unless there is a basis
22 in either contract law or statutory law to give the claimant a
23 security interest. The underlying rationale for that, even
24 though it's not strictly relevant to my legal decision, just
25 helps you understand why the Code is put together this way, is

1 because a claim of lien gives one creditor a leg up against the
2 remainder of the creditor community. Without understating the
3 importance of your claims, there are lots of creditors in the
4 GM case who contend, sometimes more than contend with some
5 basis for their contentions, that they were hurt in GM vehicles
6 by reason of GM's fault or that they got defective cars by
7 reason of GM's fault or even that GM or its dealers or agents
8 lied to them when they acquired their vehicles. I don't make
9 any findings as to whether or not any of those claims are valid
10 or not. My guess is some are and some aren't and some are in
11 between. But the point is that none of them is a secured
12 claim. They're all unsecured claims. If you claim a security
13 interest, you have to show that entitlement by contract such as
14 a mortgage, which you haven't alleged here, or by a statute,
15 which mainly exist to give state taxing authorities liens or
16 federal taxing authorities liens which you don't have here. I
17 don't want to underestimate the importance of what's bugging you,
18 but whatever you have, it's an unsecured claim. It's not a
19 secured claim because you don't have a lien.

20 GM is not asking to disallow your claim in its
21 entirety. They're asking that it be reclassified as an
22 unsecured claim which is the right thing for them to ask for.
23 And your rights vis-à-vis your unsecured claim will be
24 litigated as we go forward, initially, through alternate
25 dispute resolution which is sometimes referred to in slang as

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1 ADR. So I'm sustaining the debtors' objection granting its
2 motion to reclassify. And, Mr. Smolinsky, you are to settle an
3 order in accordance with that ruling. The time to appeal this
4 determination, Mr. Kodsy, is going to run from the time that
5 the Court docketts the underlying order not from the date of
6 today's explanation and ruling. Have a good day.

7 MR. KODSY: Thank you, Your Honor.

8 THE COURT: Very well. Mr. Smolinsky?

9 MR. SMOLINSKY: Thank you, Your Honor. The next
10 series of matters on the agenda will be handled by my
11 colleague, Angela Zambrano.

12 THE COURT: Sure. Ms. Zambrano, you want to come on
13 up, please?

14 MS. ZAMBRANO: Thank you, Your Honor. The next
15 matters on the agenda are objections to individual claims that
16 we've asked to be expunged. The reason we've asked them to be
17 expunged is that they're duplicate of class claims. And so
18 what I'd like to do to put those in context is actually present
19 the class settlement. And that'll make sense as to why they're
20 duplicative.

21 THE COURT: Sure. Pause for a second and allow class
22 counsel to come on up.

23 MS. DE BARTOLOMEO: Thank you, Your Honor.

24 MS. ZAMBRANO: Thank you.

25 THE COURT: Get your papers organized down on the

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1 table. Give me an appearance so I know you by name and then
2 I'll permit you folks to go tag team if that helps in terms of
3 presenting stuff to me.

4 MS. ZAMBRANO: Thank you, Your Honor.

5 MS. DE BARTOLOMEO: Good morning, Your Honor. I'm
6 A.J. De Bartolomeo from Girard Gibbs in San Francisco and we
7 are class counsel in the matter.

8 THE COURT: Okay. Thank you.

9 MS. ZAMBRANO: And to be clear, we're going to be
10 presenting class settlements in two matters both of which
11 Gerard Gibbs is class counsel. I'd like to start with what is
12 known as the Anderson or "piston slap" claim. That is a class
13 claim that was based on a California action, class action, that
14 was certified in November of 2006. Class members in that case
15 alleged that GM, the Old GM, had violated California unfair
16 competition law by offering an adjustment program to certain
17 consumers who complained about the piston slap problem but not
18 offering it to all consumers and therefore violating California
19 law. And this related to certain Silverado trucks with model
20 years 1999 to 2003.

21 The case was eventually -- was quite heavily litigated
22 and was eventually settled in November 2008. The Court
23 preliminarily approved the settlement in November 2008 and then
24 sent extensive notice to the class members. Approximately a
25 quarter of a million class notices were mailed out.

1 Publication notice in English and Spanish was also provided.
2 The settlement was finally approved by the California court in
3 March of 2009. Well, at that point, as Your Honor knows, the
4 process to begin receiving claims begins. So class members
5 were required to submit claims to GM by May 11th, 2009. And
6 the reason it was GM is that GM was acting as the class claims
7 administrator in the Anderson settlement. That was part of the
8 settlement agreement.

9 Approximately 6,000 claims were received by GM from
10 class members who believed that they had a claim based on the
11 piston slap allegations. MLC, of course, filed for
12 bankruptcy -- the Old GM, now MLC, filed for bankruptcy
13 protection on June 1st, 2009. At that time, nothing had been
14 done with those 6,000 claims forms that we're aware of. And
15 so, essentially, the class was completely unadministered.
16 Class counsel then at that point, after Your Honor issued a
17 ruling setting a bar date for claims, approached --

18 THE COURT: In this court as contrasted --

19 MS. ZAMBRANO: In this court --

20 THE COURT: -- as a matter of class action law.

21 MS. ZAMBRANO: Excuse me. Yes. Class counsel reached
22 out to the debtors' counsel in the fall of 2009 and, unlike
23 some of the other class action claims that I have been before
24 Your Honor on, asked Mr. Smolinsky if an agreement could be
25 reached such that they could file a class claim on behalf of

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1 the class because they had been certified and there had been a
2 settlement.

3 THE COURT: In this case, in contrast, for example, to
4 the apartheid claims, there actually had been a class
5 certification pre-petition. And now the request was that it be
6 implemented in this court.

7 MS. ZAMBRANO: Correct. At that time, the request was
8 simply that class counsel be permitted to file on behalf of all
9 class members one class claim. You can imagine that that was
10 administratively convenient to the debtors and to the Court and
11 so we agreed to that. And then Your Honor issued an order
12 approving that stipulation.

13 After that period of time, we have been negotiating
14 with class counsel to determine an appropriate amount from the
15 debtors' perspective as well as class counsel's perspective for
16 that class claim. There were three main issues that I need to
17 address with you to understand the nature of the settlement.
18 First was the class consideration itself. There are a number
19 of different buckets, if you will, of class consideration that
20 class members could apply for and obtain in the claims process.
21 One of those buckets was if the person had not actually had a
22 diagnosis, if you will, from a mechanic that they had the
23 piston slap problem, GM agreed as part of the settlement that
24 the class member could go to an authorized dealer, have this
25 evaluation. If they had the piston slap problem, GM would then

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1 pay for the appropriate repairs. That was part of the
2 settlement. Obviously, in this context, we can't provide that
3 type of consideration. So the question was -- and this is
4 similar to another class action that I appeared before Your
5 Honor last year on -- what to do with those class members who
6 had been part of the class, had released their claims according
7 to the settlement agreement but couldn't get the consideration
8 that we had agreed to provide.

9 THE COURT: Not from Old GM because Old GM doesn't
10 service cars anymore.

11 MS. ZAMBRANO: Correct. So we negotiated with class
12 counsel to come up with a dollar value for those type of
13 claims. And then we aggregated that with the other claims that
14 were out there with one exception. And that is the next
15 problem with the class -- with the class claim and how to come
16 up with an appropriate value. And that was, we had these 6,000
17 claims forms that no one had what we call in class action
18 law -- no one had vetted them. No one had gone through and
19 said this person has made a claim for the GMPP part of the
20 settlement. I won't bore you with the details unless you'd
21 like, but that was one of the types of consideration that a
22 class member could get. Someone has to do that so that each
23 claimant can get their appropriate amount under the settlement.
24 And so the question was how do we value the total proof of
25 claim if no one had looked at each of those pieces of paper.

1 And obviously, that was burdensome to the debtors.

2 What we ultimately agreed to do is class counsel
3 evaluated a sample of those claims, approximately a thousand of
4 them, and determined from those thousand how many fell into
5 each of the buckets and then extrapolated that out for the
6 6,000 or so class members that had submitted claims forms to
7 get a total value of the class settlement that they believed
8 was appropriate. We evaluated that and discussed it,
9 challenged it with class counsel and ultimately arrived at a
10 class settlement -- class proof of claim amount of
11 approximately 8.8 million dollars. And that was, by the way,
12 using the number that we came up with when the first aspect of
13 the settlement -- when the repairs -- every repair that we --
14 or, excuse me, the evaluation of repair, we factored in that
15 dollar value, that 1800 dollars per class member as well as all
16 the other buckets to come up with the 8.8.

17 So at that point, we had an amount, the 8.8 million
18 dollars that the debtors would agree to with respect to the
19 class claim. But the third problem being we don't have a class
20 administrator in Old GM. And the debtors were not willing to
21 undertake the expense of that as well. So as part of this
22 settlement, class counsel has agreed to do just that,
23 administer these 6,000 claims forms appropriately, monetize the
24 claim, first of all, to the extent that it's permitted and
25 approved by this Court, and then administer for each of those

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1 6,000 claims forms the pro rata share that is appropriate for
2 each claim -- class member who submitted a claims form.

3 So we are then before Your Honor asking this Court to
4 approve the settlement both under Bankruptcy Rule 9019 as well
5 as under Federal Rule of Civil Procedure 23. I know Your Honor
6 is familiar with Federal Rule of Civil Procedure 23 -- both
7 rules, for that matter. But I won't belabor the Rule 23
8 factors except to say that we are expressly asking Your Honor
9 to rely on or adopt the findings that the California court made
10 with respect to the class. I will note that, and class counsel
11 can also elaborate on this, there was extensive discovery and
12 full briefing on the class certification prior to that ruling.
13 So we respectfully request that the Court certify the class and
14 approve the settlement under Rule 23.

15 Now, the only footnote here -- and again, this is
16 similar to one of the class actions that I appeared before you
17 last year on -- regards notice. And that is, should there be a
18 renoticing of the class members here to inform them about the
19 changes that occurred -- the modifications in the settlement
20 that occurred between the time the California court approved it
21 and Your Honor is approving the settlement. And with respect
22 to that, the debtors submit that no addition notice is
23 necessary. There are a few cases out there -- and, in fact,
24 it's been recognized in the class action treatise that in
25 certain circumstances, and we believe this is one of them,

1 notice is not appropriate of a modification; in fact,
2 counterproductive. Here, there's been no collusion, no
3 evidence of collusion, no allegations of collusion between
4 counsel. The expense of additional notice would be burdensome
5 and, in fact, would probably cause the settlement here to fall
6 apart. The agreement provides such. And the class is arguably
7 better off. In the example that I gave you -- well, first of
8 all, every one that is in -- had a right to consideration under
9 the settlement before is basically getting the same thing. It
10 just would be their pro rata share of the class claim except
11 for the class members who are getting the evaluation and the
12 repair. And with respect to those class members, one could
13 argue that perhaps they may be even better off because even if
14 they don't have the problem after an examination, they still
15 get the proof of claim -- their pro rata share of the proof of
16 claim.

17 THE COURT: This would be in the currency of New GM
18 stock and warrants?

19 MS. ZAMBRANO: What the agreement provides for is that
20 class counsel actually monetize that -- those stock and
21 warrants.

22 THE COURT: Oh, in other words, creates -- gets it
23 initially but then creates a pot of money roughly corresponding
24 to the value of that less the cost of monetizing it and that's
25 divvied up pro rata amongst the claimants?

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1 MS. ZAMBRANO: Exactly. So, in sum, then we ask the
2 Court to approve it -- the settlement, not approve the
3 additional notice. And then I'm going to turn to the -- there
4 was an objection that was filed with respect to one duplicative
5 claim. But before I do that, I want to just make sure class
6 counsel doesn't have any comments about the settlement itself.

7 THE COURT: Okay. Ms. De Bartolomeo, do you want to
8 be heard?

9 MS. DE BARTOLOMEO: Thank you, Your Honor. It's
10 always a pleasure to come to New York because this is one of
11 the few places in the country that many people can actually say
12 my name.

13 THE COURT: I had a high school teacher with the same
14 name.

15 MS. DE BARTOLOMEO: Really? Oh, I'll have to check
16 the records. It might a long lost relative.

17 Your Honor, I just would like to supplement what
18 bankruptcy counsel said to kind of emphasize the fact that the
19 settlement that's before your court in bankruptcy court had as
20 its origin the underlying terms of the original settlement in
21 California. That was, as counsel has said, approved by the
22 Court through the normal course of a class action settlement
23 process. And it is important to note that the class
24 certification in the underlying case was a very hard fought
25 battle. It was certified under California law and then General

1 Motors actually took a writ up to the court of appeal to
2 challenge that certification and the notice procedure. That
3 was denied and the notice was approved as the parties had
4 finally presented to the Court.

5 That I would also say to reiterate bankruptcy
6 counsel's request that no additional notice is required here.
7 The notice was found by the underlying California court during
8 the court of preliminary approval and the final approval to be
9 adequate under due process. And constitutional adequacy is one
10 of the premises of approval of that settlement.

11 Based on the notices that went out, the claims that
12 were received were consistent also with the percentage of
13 people that, through the discovery in that case, we had
14 expected to actually come in and say I have this problem. We
15 knew that all 250,000 of the class members were not going to
16 have experienced the problem. But through the discovery with
17 General Motors, we knew that a certain percentage would. And
18 the claims numbers were consistent with that. So we feel very
19 comfortable about the people who are now before the Court in
20 our class proof of claim. Those are the ones that had the
21 problem that are standing there saying please address my
22 situation. And they've also released their claims against
23 General Motors.

24 In terms of the point of monetizing the claim, the
25 order that's before Your Honor gives us the option of doing

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1 that. And I will advise the Court that what our plan is is to
2 assess the situation, see what we believe is best for the
3 class, present Your Honor's order, if you so sign it, to the
4 underlying class -- sorry -- the underlying Court in California
5 to advise that Court and then present that Court with our plan
6 to monetize the relief and then proceed with the pro rata
7 distribution to the claimants as defined under the plan.

8 THE COURT: So, in other words, what you're saying is
9 I would give like what you might call a phase 1 approval. And
10 then if the California court was comfortable with that, it
11 could then approve it?

12 MS. DE BARTOLOMEO: No, Your Honor. I didn't mean to
13 mislead you. We really don't want to give the California court
14 any leeway. What we really want to do is present to them what
15 the bankruptcy court, Your Honor, has found as fair, reasonable
16 and adequate to the class and simply advise that Court this is
17 how we're going to proceed. Based on our experience with that
18 Court following the class -- sorry -- the approval of the --
19 final approval of the settlement, we do not anticipate that
20 Court to challenge Your Honor's order at all. In fact, he has
21 just been monitoring what's been going on. We've been
22 providing status updates. And he knows that at this point we
23 have negotiated with bankruptcy counsel to reach a resolution.
24 It's really more of a procedure that we had included in our
25 process to make sure that all the courts that are involved in

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1 this class action are aware of what's going on.

2 THE COURT: Okay. Continue, please.

3 MS. DE BARTOLOMEO: The only additional fact that I
4 would add is that the Anderson class action in the settlement
5 agreement, because it had not reached the stage where claims
6 administration had proceeded and any further recovery had been
7 provided to the class, we wanted the class representative, Mr.
8 Anderson, to review and sign off on the settlement agreement.
9 He was appointed by the underlying Court to be the class
10 representative and had a duty as such. Mr. Anderson did review
11 the settlement agreement carefully with class counsel, who was
12 also appointed by the underlying Court, and did sign off on the
13 settlement agreement. And we respectfully submit that the
14 signature of class counsel and of the class representative
15 indicates our -- not just agreement but our approval of this
16 agreement, that we do believe it's in the best interest of the
17 class represented by the class proof of claim.

18 The underlying settlement was negotiated in
19 excruciatingly detailed timing, who got paid, when they got
20 paid, what claims were submitted, as bankruptcy counsel has
21 presented, the different types of claims. Those have all been
22 incorporated into this settlement that's before Your Honor and,
23 again, we believe, in a fair and reasonable way. That
24 settlement was reached with General Motors' counsel on the eve
25 of the trial, essentially. And as they presented to us, that

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1 was part of their ordinary course of how they proceed before
2 trial is to attempt to settle with cases because it's in the
3 best interest of their shareholders to attempt to settle and
4 avoid the uncertainty of a trial and the cost of a trial.

5 So everything that happened below was perfectly
6 consistent with proper procedures. And we submit that this
7 settlement is consistent with that and good for the class and
8 good for the debtor because it avoids the unnecessary
9 administrative expense and red tape of, basically, 6,000
10 individual claims.

11 THE COURT: Okay.

12 MS. DE BARTOLOMEO: Thank you, Your Honor.

13 THE COURT: Thank you. Come on back up. Refresh my
14 recollection on the terrain upon which I'm ruling on this.
15 It's my impression that there was an issue as to whether a
16 parallel claim could be asserted individually. But I'm not
17 aware of anybody who says that this is an unfair settlement.

18 MS. ZAMBRANO: That's correct. There have been no
19 objectors or -- to the settlement at all. What you may be
20 thinking of is when we went to file this motion, we also looked
21 in the claims register to see if there were any claims,
22 individual claims of people who would have been included as
23 being represented.

24 THE COURT: And we have one of that character?

25 MS. ZAMBRANO: We have one of that character. We

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1 filed an objection on that basis to that claim. His name is
2 Mr. Oliva, O-L-I-V-A. Mr. Oliva has not filed any response or
3 any papers and we have been checking that regularly. We have
4 not received any --

5 THE COURT: To either the underlying --

6 MS. ZAMBRANO: in counsel's office.

7 THE COURT: -- settlement or to the motion to expunge
8 it as duplicate?

9 MS. ZAMBRANO: Correct.

10 THE COURT: Okay.

11 MS. ZAMBRANO: So then I'd like to turn to the --
12 unless you'd like to hear any other argument on that --

13 THE COURT: No. But --

14 MS. ZAMBRANO: -- particular issue.

15 THE COURT: -- I wonder if I should give threshold
16 ruling on the approval of the settlement.

17 MS. ZAMBRANO: Thank you, Your Honor.

18 THE COURT: And this is, of course, an easy
19 determination both because it is unopposed and because the case
20 management order requires people to come forward. But apart
21 from that, because it makes good sense on the merits. This is
22 one of a number of settlements that I've been called upon to
23 approve from a double barrel perspective, one under Bankruptcy
24 Rule 9019, where my principal focus is to ensure that the
25 estate isn't giving away the store; and conversely, from the

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1 perspective of Civil Rule 23, which requires a like inquiry
2 from the perspective of the plaintiff's side of the litigation
3 to ensure that its class representative and the class counsel
4 are likewise not giving away the store.

5 Like most settlements that are the result of arm's
6 length litigation and then negotiation, this is a case that can
7 easily be found to satisfy both standards. And I do so find.
8 Of course, my confidence in that is bolstered by the procedure
9 that took us up to this point. And in the absence of there
10 actually being any objection to the settlement, I'm not going
11 to burden the record further by more extensive analysis.

12 You may, if you wish, put any further findings in that
13 are supported by the record, if you wish. But I am approving
14 the settlement from both the points of view.

15 MS. ZAMBRANO: Thank you, Your Honor.

16 MS. DE BARTOLOMEO: Thank you, Your Honor.

17 THE COURT: Okay. Let's move on then.

18 MS. ZAMBRANO: The next motion then that would be set
19 for today is the motion to expunge the claim of Mr. Oliva
20 because such claim is then duplicative. He is a class member
21 that is represented by class counsel and he doesn't have an
22 individual claim. And unless there are any questions about
23 that --

24 THE COURT: And he did not opt out at any earlier
25 stage?

1 MS. ZAMBRANO: He did not opt out.

2 THE COURT: Right. That's granted for the obvious
3 reasons that it is, in fact, duplicative. If he wanted to
4 assert something independent of the class, he had to opt out.

5 MS. ZAMBRANO: That's correct. Thank you, Your Honor.

6 THE COURT: Okay.

7 MS. ZAMBRANO: I'm going to turn now to what we refer
8 to as the Dex-Cool class claim. And again, Gerard Gibbs is
9 also counsel to the class in the Dex-Cool class.

10 Like the Anderson claim that Your Honor just approved
11 for class settlement, this claim is based on a pre-bankruptcy
12 class action that was certified by nonbankruptcy court --
13 actually, two nonbankruptcy courts -- and settlement with --
14 and settled with the approval of that settlement happening by,
15 again, a California court and this time also a Missouri court.

16 The Dex-Cool class plaintiffs allege that the Old GM
17 had used a factory fill coolant in certain vehicles named "Dex-
18 Cool" that was supposed to benefit cooling systems and engines
19 of such vehicles but it, in fact, caused damage to engines and
20 cooling systems in certain cars.

21 For our purposes, the big differences between Anderson
22 and Dex-Cool is that the administration of the class settlement
23 had -- it was substantially completed at the time of the
24 filing. So here are the specifics and I'll put the filing in
25 the timeline here.

1 The settlement was finally approved by the Courts in
2 Missouri and in California in the fall of 2008. Garden City
3 was appointed in this case. It was agreed that they would act
4 as the claims administrator. And after the fall of 2008
5 approval, Garden City received approximately 68,000 claims
6 forms. Forty of those -- approximately 40,000 of those claims
7 forms were determined to be valid and timely submitted
8 according to Garden City and they requested, under the
9 settlement, that GM fund approximately six million dollars to
10 pay those claims and GM did so, all pre-petition.

11 With respect to the remaining 28,000 or so claims,
12 Garden City sent out which is commonly referred to in class
13 action practice as deficiency letters. And that was provided
14 for in the agreement because this thing happens all the time.
15 People forget to sign it. People just don't do it exactly
16 correctly. And so, GM had agreed and class counsel had agreed
17 on a procedure that would be followed in the case of deficient
18 claims. Garden City initiated that process by sending out
19 those 28,000 deficient claims notices -- or deficiency letters.

20 Approximately 11,000 claimants supplied corrected
21 claims forms and -- to Garden City in an attempt to cure their
22 deficient claim such that they could receive consideration
23 under the Dex-Cool class settlement. Of that approximately
24 11,000 claims, Garden City had started on the administration of
25 them and they had determined that about 6,600 were valid and

1 they had determined that for those 6,600, approximately
2 1,300,000 was due by GM to pay those claims. Now, they hadn't
3 dealt with the other 4,600 claims that were part of that 11,000
4 deficient claims.

5 THE COURT: That latter number being where people had
6 tried to clean up their acts and tried to cure but were still
7 deficient?

8 MS. ZAMBRANO: Exactly. So you've got 11,000 claims
9 that people had resubmitted and were trying to be paid under
10 the agreement. This was all under the agreement. And GM had
11 processed about 6600. They hadn't processed it all -- or,
12 excuse me, not GM -- Garden City had processed about 6600 and
13 asked GM for payment of 1.3 million dollars for those claims.
14 They hadn't at all processed the 4600. So -- and at that time
15 then GM filed for bankruptcy. So it's sort of -- the work was
16 sort of half done with respect to these 11,000 claims.

17 Class counsel then in the bankruptcy again sought a
18 stipulation with Mr. Smolinsky that would permit them to file a
19 class claim on behalf of the class to make sure that the
20 remaining class members -- in particular, the class members who
21 had tried to cure their deficient claims -- were provided
22 consideration under the settlement agreement. And they filed a
23 claim for approximately three million dollars as a class -- as
24 class counsel. Again, the debtors had agreed with the
25 stipulation and the Court had ordered that they could file a

1 class claim on behalf of the entire class.

2 We then, just like in Anderson case, negotiated a
3 settlement with class counsel. This time it was a little bit
4 easier because of those 11,000, 6600 of them had actually been
5 vetted. It was the other 4600 that hadn't been touched by
6 Garden City or anyone else, for that matter, to be processed
7 that we needed to deal with to come up with an allowed proof of
8 claim value that we would be willing to agree to as part of a
9 settlement and present to Your Honor.

10 Again, the class counsel reviewed a sample of those
11 4600 claims and determined an appropriate amount based on an
12 extrapolation of that sample for the entire 4600. They added
13 that to the 1.3 that Garden City had already determined were
14 for the 6.6 million. Collectively, they came up -- we came up
15 with a value of 2.2 million dollars for this proof of claim.
16 And that encompasses all members that had submitted the
17 deficient claims but cured them and the about 11,000 deficient
18 notices.

19 Again, the settlement agreement provides for the
20 allowed claim of 2,200,000 dollars to be monetized by class
21 counsel and then distributed on a pro rata basis. This time,
22 we don't have anything that's different or unusual that
23 couldn't be administered as a pro rata share of the class
24 settlement. Basically, the amount that someone would be
25 entitled to is the same under the settlement. It's just that

1 they will get a pro rata share of that monetized -- the
2 monetized claim value. There aren't any other intricacies
3 involved.

4 So we again ask that the Court approve this
5 settlement, the modification of this settlement under both
6 bankruptcy rules, Federal -- excuse me -- Federal Rule of Civil
7 Procedure 23 and Bankruptcy Rule 9019.

8 And then again, for the same reasons, we ask that no
9 additional notice be provided. I guess I would say with
10 respect to notice that this is probably even a more egregious
11 case for notice not being necessary. I would argue that it
12 would, in fact, hopelessly obscure things for claimants who had
13 received consideration years ago on the primary Dex-Cool claim
14 before the bankruptcy and then to get a second notice about
15 what's happening here. So provided that we -- that class is
16 approved -- this settlement is approved then we do have some
17 objections not to the settlement but to the motion to expunge
18 individual claims that are related to that that I'll take up in
19 a moment. But again, I'd like to give class counsel an
20 opportunity to speak about the settlement if she would like.

21 THE COURT: Okay. Ms. De Bartolomeo?

22 MS. DE BARTOLOMEO: De Bartolomeo again. Your Honor,
23 there's only one thing I'd like to add and it's just a slight
24 correction to a detail. As to that second group of claims that
25 were first given the deficiency notices, the group that

1 remained to be administered were actually -- Garden City did
2 start it. But what these people were were under the terms of
3 the settlement, if you had the Dex-Cool in your car and you had
4 a problem with it, some people had to get multiple repairs.
5 They had their engine flushed out and fixed. And then they had
6 a recurring problem.

7 THE COURT: Is this like a bad antifreeze or --

8 MS. DE BARTOLOMEO: Essentially, that's what it did.
9 It was supposed to be really good clean antifreeze but for some
10 reason, and I have to remember the science here, the way it
11 mixed with a certain gasket formulation would create a sludge
12 problem that was not a good thing in a car engine apparently.

13 But the second group of people -- they're what we
14 refer to as the multiple repairs on a single claim form. And
15 the claim form specifically said if you had multiple repairs,
16 submit multiple claim forms. We anticipated some people would
17 not get that instruction correctly and actually had
18 specifically negotiated with GM's counsel that that would be a
19 deficiency that somebody could cure. This last group that
20 hadn't been fully administered and, essentially, had only been
21 started to be administered were those group of people for
22 obvious reasons. They were the most complicated of the claims
23 because they had multiple repairs. And you had to submit
24 documentation in this particular settlement for your -- to
25 identify what the cost was of the repair so we'd know how much

1 to pay you under the settlement. So they were complicated.

2 And that's the last group.

3 We did have Garden City do a -- essentially, kind of a
4 quick sampling prior to the final negotiation with Mr.
5 Smolinsky over the value of my class proof of claim because I
6 knew about the 1.3 million but I just didn't know what quite to
7 do with the other group. So we had looked at what they
8 initially did and extrapolated off of that. Later on, in the
9 negotiations with bankruptcy counsel to try to reach an agreed
10 amount on the class proof of claim, my firm took on the claims
11 administration of that group. Garden City sent us big all hard
12 drive with all the documents and all the claims and all the
13 detail that you have to deal with for this kind of thing. And
14 then we did that further real statistically significant
15 sampling and extrapolated off of that.

16 So, other than that, I concur with everything
17 bankruptcy counsel said. The Dex-Cool litigation, like the
18 Anderson one, was very hard fought. It was actually fought in
19 Missouri, California and in an MDL in East St. Louis. And
20 actually, this settlement, like the Anderson settlement,
21 happened on literally the courtroom steps the night before
22 trial was supposed to start. And very arm's length
23 negotiation. You don't litigate that long against a company
24 like General Motors without it being a pretty hard fought
25 battle. But we believe that the underlying settlement was

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1 constitutionally sufficient -- sorry -- constitutionally -- the
2 notice was constitutionally sufficient. And we believe that
3 the remedy under the settlement was clearly fair, reasonable
4 and adequate to the class members. This settlement that's
5 proposed before Your Honor basically incorporates those terms
6 under the bankruptcy process. But it's still fair, reasonable
7 and adequate to the remaining class members. And we
8 respectfully request Your Honor to approve it.

9 THE COURT: Okay. Thank you.

10 MS. DE BARTOLOMEO: Thank you.

11 THE COURT: Anything else from anybody before I rule
12 on the settlement's propriety? All right. I'm approving this
13 one as well for essentially the same reasons as I approved the
14 last. It passes muster under both 9019 and Rule 23 for
15 different reasons. On 9019, the estate plainly is not giving
16 away the store. But equally importantly, neither are the class
17 representatives. So that settlement is approved. And then you
18 can deal with the consequences of that approved settlement.

19 MS. ZAMBRANO: Thank you, Your Honor. The
20 consequences of that approved settlement are that we have
21 had -- Your Honor is aware of two of them. And we received
22 yesterday a third letter from one of the individual claimants
23 who is objecting, again, not to the settlement but to their
24 individual claim being expunged. All of these claimants have -
25 - or, excuse me -- did fail to opt out in the underlying Dex-

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1 Cool settlement. And so, they are part of the class. They
2 were appropriately represented by class counsel in these
3 proceedings and their individual claims are duplicative. And
4 so we ask that they be expunged.

5 I do want to note to the Court, though, that we did
6 try to reach out and explain the process because, frankly, I
7 would think to a nonbankrupt -- to a nonlawyer let alone a
8 bankruptcy or class action lawyer that it was confusing what we
9 were trying to do and that, in fact, if they were entitled to
10 anything under the settlement, they would receive it as part of
11 the administration of the class settlement by class counsel but
12 that they weren't entitled to anything more as an individual.
13 Unfortunately, we were not able to resolve any of those
14 responses to our objection to their claims. I also asked class
15 counsel to communicate with those class members and she,
16 unfortunately, was also not successful. However, because their
17 claims are duplicative and they are represented by class
18 counsel who has obtained a settlement on their behalf, we
19 respectfully request that those two omnibus objections that the
20 debtors made including with respect to the respondents -- and
21 for the record, their names are Joan Waldrop, Theresa McHugh
22 and the letter we received yesterday was from William
23 Abraham -- that those claims be expunged from the claims --

24 THE COURT: Can I assume --

25 MS. ZAMBRANO: -- register.

1 THE COURT: -- these claimants will either share in
2 the settlement that I just approved or, if they can't, it'll be
3 because of some deficiency that would have also caused their
4 claim to be disallowed?

5 MS. ZAMBRANO: That's correct, Your Honor. I think
6 one of them would be entitled to relief under the
7 administration of the -- the normal administration of the
8 class. I think Mr. -- excuse me -- Ms. McHugh has submitted a
9 claim for a warranty that wasn't covered by the settlement.
10 And I think Mr. Abraham had submitted a claim for a repair that
11 was outside the class recovery period. He's part of the class
12 but his repair came too late in the process. But he's still
13 part of the class and part of the negotiated settlement. So
14 the answer to your question is yes. If they're entitled to any
15 consideration, it will be received as part of class members.
16 And if they're not then they won't.

17 THE COURT: Okay. All right. I'm going to expunge
18 those claims as duplicative for the reasons that were discussed
19 in colloquy.

20 MS. ZAMBRANO: That is all I have. Thank you, Your
21 Honor.

22 THE COURT: Okay. Mr. Smolinsky?

23 MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky.
24 And just for the record, those were omnibus claim objection 218
25 and 219. We'll be submitting orders.

1 The next matter is number 4 on the uncontested
2 calendar. That's a motion of David Irwin for relief from the
3 stay to conduct limited intrusive testing on a vehicle. We
4 have signed a stipulation resolving that motion and we'll
5 submit it to the Court.

6 THE COURT: Okay.

7 MR. SMOLINSKY: Number 5 is the motion for relief from
8 the automatic stay by David Shostack. You may recall this was
9 a claim for automobile warranty repairs that he was arguing was
10 a post-petition administrative expense claim. I'm happy to
11 report that we resolved that claim. And under the settlement,
12 the GUC trust will be providing Mr. Shostack with a general
13 unsecured claim in the amount of 3,000 dollars. And New GM is
14 going to provide Mr. Shostack with 3,000 dollars in cash. And
15 that will resolve the claim, resolve the motion. And we just
16 need one more signature on the stipulation, then we'll be
17 submitting it to Your Honor.

18 (Pause)

19 MR. SMOLINSKY: The next matter is debtors' objection
20 to claim number 67121 and 67122. This is Superior Industries.
21 We have a stipulation. We believe that it's going to be
22 finalized in the next couple of days and we'll submit it with
23 the court. If there are any hiccups then it would be adjourned
24 to May 17th but we think that we're going to be in a position
25 to deliver that to chambers.

1 Item number 7 is the debtors' fifteenth omnibus
2 objections to claim. There was one response that was still
3 remaining from Richard and Elise Birdsall. We have an
4 agreement in principle for the resolution of that response and
5 we will be submitting a stipulation to Your Honor for
6 consideration.

7 Matter number 8 is the debtors' 137th omnibus
8 objection to claims. That's Eurobond claims. The matter is
9 now able to go forward on an uncontested basis with respect to
10 Horn -- Guntbert Horn. And the matter is going to be adjourned
11 with respect to one remaining claim and it's Gerhard Vogt.

12 Number 9, debtors' 138th omnibus objection to claims,
13 that's also a Eurobond motion. The matter can now go forward
14 on an uncontested basis with respect to Ingrid Herzele and this
15 will resolve in full the 138th omnibus objection.

16 THE COURT: Help me on the claims of this character,
17 Mr. Smolinsky, because I thought the essence of the objection,
18 unless I'm confusing it with something else was that these were
19 Eurobond holders whose claims were covered by some combination
20 of the debtors having scheduled the obligation and the
21 representative. It may not have been an indenture trustee; a
22 paying agent --

23 MR. SMOLINSKY: It's a fiscal agent.

24 THE COURT: -- or something -- having filed on their
25 behalf. So what is there left to continue?

1 MR. SMOLINSKY: We've been trying to do this
2 consensually and to explain to the claimants. Sometimes it
3 takes a while. Sometimes there's a foreign language involved
4 often with the Eurobonds. So we have Italian-speaking lawyers
5 and German-speaking lawyers who ultimately get in touch with
6 these people. And usually after a conversation or two, they're
7 fine just going forward.

8 THE COURT: So you're, in essence, just allowing that
9 dialogue to continue?

10 MR. SMOLINSKY: That's correct, Your Honor.

11 THE COURT: Okay.

12 MR. SMOLINSKY: We assume that Your Honor would prefer
13 to resolve them consensually.

14 THE COURT: Yeah. As a matter of fact, I would. I'm
15 just trying to keep up.

16 MR. SMOLINSKY: Item number 10, the debtors' 143rd
17 omnibus objection to claims, also a Eurobond -- we can now go
18 forward on an uncontested basis with Lemcke and the matter is
19 adjourned with respect to Paul Schwake. Your Honor raises a
20 fair point. We're not looking to spend a lot of the estate's
21 money continuing to call these responders. And at some point
22 in the very near future, we're just going to send them notice
23 that we're going forward on a particular date, give them plenty
24 of notice, file a reply and go forward.

25 THE COURT: I understand. But I don't quarrel with

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1 you trying to make a phone call to help people understand that
2 you're not trying to bully them or anything like that.

3 MR. SMOLINSKY: The last item is the debtors' 141st
4 objection to claims. It's also a Eurobond claim. We can now
5 go forward with respect to the Baderschneider response. And
6 that will resolve in full the 141st omnibus objection to
7 claims.

8 THE COURT: Okay. So that takes care of everything
9 except my issuing a lengthier ruling on Ms. Carter?

10 MR. SMOLINSKY: That's correct, Your Honor.

11 THE COURT: All right. Ms. Carter, are you still on
12 the line? Ms. Carter?

13 MS. CARTER: Yes. I'm still on the line.

14 THE COURT: Okay. Would you like me to issue the full
15 ruling, more fully explaining my rulings on your claim?

16 MS. CARTER: Yes.

17 THE COURT: Okay. I just need to get a glass of
18 water.

19 (Pause)

20 THE COURT: In this contested matter in the jointly
21 administered Chapter 11 cases of debtor, Motors Liquidation
22 Company, formerly General Motors Corporation, or Old GM, the
23 debtors object to the seven proofs of claim filed by Sharyl
24 Carter against Old GM in this Chapter 11 case. The debtors
25 assert that all seven of Ms. Carter's claims must be disallowed

1 and expunged because Ms. Carter has failed to set forth any
2 factual or legal basis for those claims and because, despite
3 their efforts, the debtors have been unable to ascertain the
4 nature and validity of those claims. In the alternative, the
5 debtors assert that six of the seven claims that Ms. Carter
6 filed against Old GM should be disallowed because they're
7 duplicative of claim number 136, Ms. Carter's original proof of
8 claim against Old GM.

9 Ms. Carter had also filed proofs of claim in the
10 bankruptcy case of Delphi which was a former subsidiary of
11 General Motors that was spun off in 1988 and that filed its own
12 bankruptcy case in this district in 2005. Delphi's case is
13 currently before Judge Drain of this court. Ms. Carter states
14 that the claims that she filed against Delphi may or may not be
15 the same claims as the claims that she filed against Old GM.
16 She asked me to determine whether her proof of claim should be
17 in the GM case or in the Delphi case and to consolidate them
18 and put them in the correct case. That request, I will say
19 parenthetically, is one that's beyond my power to do. I can't
20 give legal advice. I can only rule on issues that are before
21 me. But I can and will clarify that I'm dealing with only
22 claims in the Old GM case and I'm not dealing with any claims
23 in the Delphi case.

24 The debtors take no position as to Ms. Carter's claims
25 against Delphi. For the sake of clarity, their argument about

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1 duplicative claims is that six of the seven proofs of claims
2 that Ms. Carter filed against Old GM are duplicative of the
3 first proof of claim that she filed against Old GM not that the
4 claims that she filed against Old GM are duplicative of claims
5 that she filed against Delphi.

6 Whether Ms. Carter has valid claims against Old GM is
7 wholly unrelated to whether she has valid claims against
8 Delphi. The Delphi case and the GM case are two separate cases
9 involving two separate debtors. I cannot determine whether Ms.
10 Carter has valid claims against Delphi. And as I noted,
11 despite her request, I can't determine whether the proofs of
12 claim that she filed in the Delphi case are duplicative of the
13 proofs of claim that she filed here. The only issue that I can
14 decide is whether Ms. Carter has any valid claims against Old
15 GM. And I find that she's failed to show that she has any
16 valid claims against Old GM or any of the other Motors
17 Liquidation debtors. Thus, the debtors' motion will be granted
18 and all seven of Ms. Carter's claims must be disallowed in this
19 case. And my findings of fact and conclusions of law as to
20 that determination follow.

21 I begin with my findings of fact. On June 18, 2009,
22 and periodically thereafter, Ms. Carter filed proofs of claims
23 against the Old GM debtors each in an unliquidated amount.
24 None of the proofs of claim provided a basis for the claim and
25 each stated that the amount was unknown. At some point, Ms.

1 Carter received a request by mail from the debtors to provide a
2 liquidated amount for her claims. In response, she filled out
3 the enclosed forms and stated that the liquidated amount for
4 each of her proofs of claim was five million dollars.

5 Ms. Carter also sent numerous letters to this Court
6 stating that she objects to the disallowance of her claims.
7 This Court has tried to extract potential bases for her claims
8 from her various letters.

9 The Court deduces from some of Ms. Carter's letters
10 that she believes that she's owed supplemental unemployment
11 benefits from Delphi that she's been unable to collect. The
12 documents attached to her letters reveal that she filed an
13 application for these benefits with the Delphi Supplemental
14 Unemployment Benefit Center in September 2010 which was denied.
15 In correspondence with Delphi and her union representative,
16 which Ms. Carter provided to the Court, she explained that she
17 was unable to properly complete the supplemental unemployment
18 benefits application because she didn't have all of the
19 necessary information and that she then requested that
20 information from both Delphi and her union representative.
21 Another attached document reveals that Ms. Carter received a
22 letter from the Ohio office of unemployment compensation
23 notifying her that unemployment benefits from the state of Ohio
24 expired in March 2010.

25 Ms. Carter also states that the debtors canceled her

1 health insurance and life insurance in November 2009 even
2 though she was told that it was not to be canceled until
3 December 31st, 2009 and that, as a result, she was unable to
4 get some treatments and medications that she needed. And in
5 other papers, Ms. Carter states that she won a small settlement
6 that was placed into Delphi/General Motor stock which she's
7 been unable to withdraw.

8 The debtors assert that neither the debtors nor the
9 GUC trust have ever offered to settle Ms. Carter's proofs of
10 claim and that the settlement she's referring to is likely with
11 the debtors in the unrelated Chapter 11 cases of Delphi. The
12 debtors also state that they've reviewed their books and
13 records and have found no support for Ms. Carter's claims.

14 Turning now to my conclusions of law, Section
15 502(b)(1) of the Code states that when an objection has been
16 made to a proof of claim, the Court, after notice and a
17 hearing, shall allow the claim "except to the extent that such
18 claim is unenforceable against the debtor and property of the
19 debtor under any agreement or applicable law for a reason other
20 than because such claim is contingent or unmatured."

21 In order to determine whether claims are enforceable
22 for bankruptcy purposes, Section 502 relies upon nonbankruptcy
23 law. See *In re Combustion Engineering, Inc.*, 391 F.3d 190, 245
24 n.66 (3d Cir. 2005) citing *Collier*. "A claim against the
25 bankruptcy estate will not be allowed in a bankruptcy

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1 proceeding if the same claim would not be enforceable against
2 the debtor outside of bankruptcy." Id.

3 A motion to disallow a claim under Section 502(b)(1)
4 is treated as a motion to dismiss. And when a Court considers
5 such a motion, the Court accepts as true all well pleaded
6 factual allegations by the claimant which, in this case, is Ms.
7 Carter. See *In re G-I Holdings, Inc.*, 443 B.R. 645, 664
8 (Bankr. D. N.J. 2010), a decision by Bankruptcy Judge
9 Gambardella.

10 If Ms. Carter has pleaded facts that, if assumed to be
11 true, would constitute a claim against the debtors then so the
12 motion to disallow that claim will be denied, at least at that
13 point in time, and the issues of fact are resolved by the Court
14 at a later time after an evidentiary hearing has been held.
15 But by the same token, if there aren't even enough facts in the
16 claim to show a basis for recovery then the Court must look at
17 it differently because there hasn't been the requisite showing.

18 So in the Lehman Brothers case, *In re Lehman Brothers*
19 Holdings Inc., Judge Peck of this court explained that where
20 proofs of claim are so lacking in supporting evidence and
21 logical linkage to the debtor's case, they're not entitled to
22 any presumption that they're *prima facie* valid and the burden
23 of proof shifts to the claimant. See 2010 WL 4818173 at *2
24 (Bankr. S.D.N.Y. 2010).

25 Here, Ms. Carter's proofs of claim lack any

1 explanation of the basis for her claims and lack any supporting
2 evidence. Therefore, Ms. Carter's proofs of claim don't get
3 that presumption that they're *prima facie* valid and she has the
4 burden of demonstrating that she has valid claims against the
5 Old GM estate.

6 Of course, the fact that Ms. Carter may have received
7 notice of the bankruptcy case and/or notice of the bar date and
8 the fact that she filed proofs of claim against the debtors
9 doesn't mean that she has valid claims against the debtors.
10 What the bar date notice states, in effect, is that if Ms.
11 Carter had claims against the debtors in the first place, she
12 needed to file a proof of claim. The fact that she received a
13 notice was not an admission by the debtors and did not in any
14 way imply that she did, in fact, hold valid claims against Old
15 GM or any of the other Old GM debtors. And filing a proof of
16 claim did not give her a claim against Old GM if she didn't
17 already have one.

18 Now, none of the arguments that Ms. Carter made in her
19 letters or other correspondence with the Court state any claim
20 against Old GM as a matter of law. First, some of her claims
21 seem to arise out of employment but Ms. Carter has not
22 established that she ever worked for Old GM. Her
23 correspondence, especially that regarding her request for
24 supplemental unemployment benefits from Delphi actually suggest
25 that she was employed by Delphi and not by the debtors. Delphi

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1 was spun off from General Motors in 1998. Therefore, Ms.
2 Carter could only have employment related claims against Old GM
3 if those claims accrued before 1998 when Delphi was still an
4 affiliate of General Motors. But the statute of limitations on
5 any employment claim that she may have had in 1998 had
6 certainly run by 2009 when Old GM filed for bankruptcy.
7 Recognizing, Ms. Carter, that you're not a lawyer, I'll say
8 that the statute of limitations is a statute that says that
9 when you have a claim you have to bring it within a certain
10 period of time. And if you don't do that, even if you don't do
11 that even if it might have otherwise been legitimate under the
12 law, it can't be asserted.

13 In sum, because Ms. Carter failed to establish that
14 she ever worked for GM and if it was -- the claim relates to a
15 time back when Delphi was GM, the statute of limitations has
16 run and therefore the claim must be disallowed for that reason,
17 Ms. Carter can't assert any employment related claims against
18 the Old GM estate.

19 Ms. Carter also stated that the General Motors estate
20 canceled her health insurance and life insurance in November
21 2009 even though she was told that it was not to be canceled
22 until December 31st, 2009. And she alleges that, as a result,
23 she was unable to get treatments and medications that she
24 needed. But again, Ms. Carter has failed to establish that she
25 ever worked for GM and failed to establish that she ever

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1 received or was entitled to receive these insurance benefits
2 from the debtors.

3 With respect to Ms. Carter's argument that she won a
4 small settlement that was placed into Delphi and/or General
5 Motors stock, Ms. Carter has failed to explain or provide any
6 evidence of this alleged settlement. And even if she did, in
7 fact, get such a settlement, she only alleged that she was
8 entitled to receive or did receive Old GM's stock as part of
9 the settlement. But sadly, as we who have been following this
10 case know, holders of stock in Old GM were not entitled to any
11 recovery under the Old GM Chapter 11 plan because Old GM's
12 creditors didn't get paid in full. And stockholders can't
13 recover until creditors are taken care of. Therefore, even if
14 Ms. Carter was a stockholder of Old GM, she isn't entitled to
15 any relief or claim against Old GM on that basis either.

16 This Court has attempted unsuccessfully to ascertain
17 the basis for Ms. Carter's claims against Old GM. It was Ms.
18 Carter's burden, rather than the debtors' or the Court's, to
19 determine whether she has claims against GM or Delphi and to
20 provide some explanation or support for those claims. She
21 filed a proof of claim against the debtors -- actually, she
22 filed seven of them -- and responded to the debtors' objections
23 to her claims but she still hasn't articulated any claims that
24 she has against Old GM or any of its affiliates. Therefore,
25 her proofs of claim must be disallowed. And upon the entry of

1 an order implementing this ruling, they will be disallowed.

2 For the avoidance of doubt, so there isn't any
3 misunderstanding, my ruling here does not affect any claims
4 that Ms. Carter may have filed in the Delphi case. She may
5 have claims against Delphi or she may not. But here, I
6 determine only that Ms. Carter has no claims against the Motors
7 Liquidation debtors, the Old GM debtors.

8 Mr. Smolinsky, you're to settle an order in accordance
9 with this ruling. It should provide, in addition to
10 disallowing these claims, words that say in substance that this
11 ruling has nothing to do or no effect on her claims, if any,
12 against Delphi. The time to appeal from that order will run
13 from the time of the entry of that order and not from the date
14 that is today that I am dictating these rulings.

15 Ms. Carter, you can't reargue the legal basis but do
16 you understand, in essence why I ruled the way I did?

17 MS. CARTER: Yes, I do.

18 THE COURT: Thank you very much.

19 MS. CARTER: Your Honor -- Your Honor?

20 THE COURT: Yes. Go ahead.

21 MS. CARTER: Yes. Can I ask one question that we was
22 talking about earlier even though you made your ruling
23 already -- is the one about the claim for the car in the class
24 action one? Did they find out if I was in that claim or not?

25 THE COURT: Mr. --

1 MS. CARTER: Did counsel find that out?

2 THE COURT: Mr. Smolinsky, can you help me on that?

3 MR. SMOLINSKY: Your Honor, that reference is to the
4 Dex-Cool class action. And we will send a letter to Ms. Carter
5 indicating whether or not she had filed a claim in the Dex-Cool
6 class action or whether she had filed an opt out. And we'll do
7 that before we serve the order on her.

8 THE COURT: Okay. Fair enough. So that's going to be
9 clarified in the next days or weeks, Ms. Carter. And before an
10 order is finally entered that deals with your claims, we're
11 going to get an answer to that inquiry.

12 MS. CARTER: Okay.

13 THE COURT: All right.

14 MS. CARTER: Okay. Thank you.

15 THE COURT: Okay. That should take care of that. To
16 what extent do we have any further bus -- yes. Do you want to
17 come on up, please?

18 MR. OWEN: May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. OWEN: I have one -- I think this is probably
21 better directed to Mr. Smolinsky. Cone Owen, Smith and
22 Alspaugh, Birmingham. I'm here on --

23 THE COURT: Birmingham, Alabama?

24 MR. OWEN: Birmingham, Alabama. I'm here under the
25 111th omnibus objection that was adjourned on February 3rd and

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1 was supposed to be taken up today. I just wanted to record my
2 appearance, Your Honor. I was here at significant expense to
3 me anyway. I didn't get any notice that the hearing had been
4 adjourned again -- the 111th. There were five folks that --
5 it's the bar date omnibus objection, Your Honor. The lawyers
6 had messed up. I think there were five folks that filed
7 responses to the debtors' objection. And Your Honor adjourned
8 those February 3rd due to the weather to be heard today. And I
9 didn't -- I don't know. I may just be wrong. I don't know.

10 THE COURT: Let's see if we can sort this out. Why
11 don't you stay up at counsel table, please, sir?

12 MR. OWEN: Oh, thank you.

13 THE COURT: And could I impose on you to repeat your
14 name?

15 MR. OWEN: Cone Owen, Your Honor, C-O-N-E.

16 THE COURT: That's your first name?

17 MR. OWEN: Yes, sir.

18 THE COURT: And Owen is your last name?

19 MR. OWEN: Yes, sir.

20 THE COURT: Okay, Mr. Owen. Go ahead, Mr. Smolinsky.

21 MR. SMOLINSKY: Your Honor, this is the 111th omnibus?

22 MR. OWEN: Yes.

23 MR. SMOLINSKY: I believe it's been adjourned several
24 times already. This happens very rarely, as you know, that
25 people don't get notice. We sent out the agenda, as we always

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1 do, two days before. And it's item number 28 on the agenda
2 which shows that it is adjourned to May 17th at 9:45. I don't
3 believe with respect to this claim that we yet filed our
4 responses, our replies, to any remaining claims. This is an
5 example of one of the claim objections that we were going to
6 continue to work with to try to understand why the claim was
7 filed late and whether there is an excusable neglect before we
8 start litigating.

9 THE COURT: Okay. Well, obviously, I feel terrible
10 that you came up from Birmingham because of this
11 misunderstanding. And obviously, you've noted your appearance
12 and you're still in the ballpark. What I would confirm my
13 willingness to do, Mr. Owen, is that if you want to appear
14 telephonically and save the cost of a further call, I'm going
15 to permit you to do that for anything other than an evidentiary
16 hearing.

17 MR. OWEN: Thank you, Your Honor.

18 THE COURT: I encourage you to continue any exchange
19 of facts or dialogue that you have with the debtors. I can't
20 require either side to give in on the merits of the position
21 or, for that matter, to settle, but I'd encourage both you
22 folks to continue your dialogue. And if you have to agree to
23 disagree on May 17th, if it's a legal argument, I'll permit
24 you to appear by telephone. And under the circumstances, I'll
25 direct that the debtors pick up the cost of your CourtCall

1 participation since I don't know what caused the breakdown in
2 communication. Even if it's that unfair to the debtors, Mr.
3 Smolinsky, they can pick up the cost of the call. And if it
4 requires an evidentiary hearing later on then that's what we'll
5 have to do.

6 MR. SMOLINSKY: Thank you, Your Honor. And I'll note
7 my apology for the record as well.

8 THE COURT: Okay. Thank you very much.

9 MR. OWEN: And I think what happened, Your Honor, is
10 the last time this happened, they actually -- my secretary
11 called because of the weather and then we were notified of the
12 adjournment. But it's a two-day mailing and, unfortunately,
13 didn't get to Birmingham in two days. So what I'll do is call
14 first which is a bit smarter thing to do, I guess. But I
15 apologize for taking up the Court's time.

16 THE COURT: No. That's all right. You never have to
17 apologize for protecting your client.

18 Okay. We're adjourned.

19 MR. SMOLINSKY: Thank you, Your Honor.

20 THE OPERATOR: Attorney Alfredo Cardona.

21 MR. CARDONA (TELEPHONICALLY): Thank you.

22 THE COURT: Mr. Smolinsky, can you come to a
23 microphone, please? CourtCall, can you repeat the name of the
24 attorney who wants to be heard?

25 THE OPERATOR: Alfredo Cardona.

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1 THE COURT: Okay. Mr. Cardona, are you appearing on
2 one of the matters before me today?

3 MR. CARDONA: Yes.

4 THE COURT: Can you tell me what you're appearing on?

5 MR. CARDONA: We are appearing for the (indiscernible)
6 Sales in this case.

7 THE COURT: I had some trouble following that. Mr.
8 Smolinsky, did you follow what he said?

9 MR. SMOLINSKY: No, Your Honor. I didn't.

10 THE COURT: Mr. Cardona, could you repeat yourself,
11 please?

12 MR. CARDONA: Yeah. We represent the (indiscernible).

13 MR. SMOLINSKY: Is that a claim objection?

14 MR. CARDONA: Yeah. The claim number, 69135.

15 THE COURT: And do you understand it to be objected to
16 and before me today?

17 MR. CARDONA: Yes, sir.

18 MR. SMOLINSKY: What claim motion was that?

19 MR. CARDONA: Hold on one second. It was notice of
20 debtors' objection to claims, late-filed bar date.

21 THE COURT: Late-filed claims?

22 MR. CARDONA: Yeah.

23 THE COURT: Is this the same objection that Mr. Owen
24 was talking about?

25 MR. SMOLINSKY: I don't see the name, Your Honor.

1 MR. CARDONA: I'm sorry?

2 THE COURT: We're trying to get the facts, Mr.
3 Cardona. Stand by for a second.

4 MR. CARDONA: Not at all.

5 THE COURT: If you hear silence, it'll be okay. If I
6 feel like we're going too long with silence, I'll just let you
7 know that --

8 MR. SMOLINSKY: That's --

9 THE COURT: -- the line is still alive.

10 MR. SMOLINSKY: I'm sorry, Your Honor. That's Sandra
11 Carcoma?

12 THE COURT: Mr. Cardona, did you hear Mr. Smolinsky's
13 question?

14 MR. CARDONA: No. Say it again.

15 MR. SMOLINSKY: What was the name of your client?

16 MR. CARDONA: Aruvind Arasels (ph.).

17 MR. SMOLINSKY: What I would recommend, sir, is to
18 give me a call in my office and I will work things out with
19 you.

20 MR. CARDONA: Sure. No problem.

21 MR. SMOLINSKY: And if you provide us with a copy of
22 your e-mail address, we can e-mail all of the agendas to you so
23 you know what matters are going forward.

24 MR. CARDONA: Okay. No problem. And what's your
25 number?

1 MR. SMOLINSKY: You can call me, (212) 310-8767.

2 MR. CARDONA: 8767. Okay. And is there any extension
3 on that? Or --

4 MR. SMOLINSKY: No. Just ask for Mr. Smolinsky.

5 MR. CARDONA: Smolinsky?

6 MR. SMOLINSKY: Yes.

7 THE COURT: And, Mr. Cardona, perhaps stating the
8 obvious, we will note that you were on the call today and
9 that -- I don't think anything was intended to affect your
10 client's rights today. But if it did, I will note that you
11 appeared and your client's rights will be protected.

12 MR. CARDONA: Okay, Your Honor.

13 THE COURT: Okay.

14 MR. CARDONA: Thanks.

15 THE COURT: Okay. Is there anybody else on the phone
16 whose needs and concerns haven't been addressed?

17 THE OPERATOR: That's all on the phone with CourtCall
18 except Ms. Sharyl Carter.

19 THE COURT: I beg your pardon?

20 THE OPERATOR: Ms. Sharyl Carter. She's still on the
21 line. I think you all had her.

22 THE COURT: Okay. Well, we dealt with Ms. Carter's
23 situation.

24 MS. CARTER: So I can hang up now?

25 THE COURT: Okay. CourtCall, do you reflect anybody

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1 else still on the line at this point besides Mr. Cardona and
2 Ms. Carter?

3 THE OPERATOR: No, Your Honor.

4 THE COURT: Okay. Thank you very much for your help,
5 Ms. Carter and CourtCall as well. Okay. We're adjourned.
6 Bye-bye.

7 MR. SMOLINSKY: Thank you.

8 THE OPERATOR: Good-bye.

9 (Whereupon these proceedings were concluded at 12:36 p.m.)

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RULINGS

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7	Debtor's Request to Disallow and Expunge	35	18
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23	and William Abraham, granted as being		
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6	00136, 00552, 07020, 09072, 14901, 19246, and		
7	19247 Filed by Sharyl L. Carter Sustained and		
8	All Seven Claims to be Disallowed		

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2 C E R T I F I C A T I O N

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4 I, Pnina Eilberg, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

8

9 PNINA EILBERG

10 AAERT Certified Electronic Transcriber CET**D 488

11

12 Veritext

13 200 Old Country Road

14 Suite 580

15 Mineola, NY 11501

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17 Date: April 27, 2011

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